S. HRG. 99-148

THE ANTI-APARTHEID ACT OF 1985

HEARINGS

BEFORE THE

COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

AND THE

SUBCOMMITTEE ON INTERNATIONAL FINANCE
AND MONETARY POLICY

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 635

TO EXPRESS THE OPPOSITION OF THE UNITED STATES TO THE SYSTEM OF APARTHEID IN SOUTH AFRICA, AND FOR OTHER PURPOSES

APRIL 16, MAY 24, AND JUNE 13, 1985

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THE ANTI-APARTHEID ACT OF 1985

TUESDAY, APRIL 16, 1985

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The committee met at 11 a.m., in room SD-538, Dirksen Senate Office Building, Senator John Heinz presiding.

Present: Senators Heinz, Gorton, Mattingly, Hecht, Proxmire, Cranston, Sarbanes, Dodd, and Dixon.

Also present: Senators Kennedy and Weicker.

OPENING STATEMENT OF SENATOR HEINZ

Senator HEINZ. Ladies and gentlemen, this hearing of the Senate Banking Committee will come to order.

This hearing inaugurates the Senate Banking Committee's review of the problem of South Africa and also stands as a reflection of our determination that some action by the U.S. Government to bring an end to the policy of apartheid is both necessary and appropriate.

Both Congress and the executive branch have over several administrations spent considerable time attacking and condemning the moral outrage that we call apartheid. For the past 4 years the United States has practiced the policy of constructive engagement attempting to persuade the South African Government to end its racist practices and bring justice to its people.

The results of our efforts, in my judgment, have been negligible at best. The failure of the South African Government to make more than token gestures in response to pressure has perpetuated an intolerable situation.

Blacks in South Africa continue to be denied any meaningful role in the political life of their country; the forced relocation of blacks to artificially defined homelands continues unabated. The recent violence and tragic death of 19 black South Africans was condemned by the Senate by its overwhelming passage of Senate Joint Resolution 96 which indicates a deteriorating domestic situation.

The frustration of the black community can only lead to more violence which in turn can only elicit more repression from a government struggling to maintain a stranglehold on the vast majority of its people.

South Africa is the only country that has legalized and institutionalized racism as an element of public policy and that fact alone imposes a burden upon us to respond in legal terms, not just in rhetorical terms.

As a result, it's become clear that the United States can no longer accept improvement in the conditions in South Africa on a timetable to be proposed by the South African Government. The question we must come to terms with is how to proceed beyond constructive engagement without sacrificing our leverage to bring about the final outcome we all desire—an end to apartheid.

Having stated the need to move beyond constructive engagement, let me be clear about the fact that I have reservations about the legislation that is the subject of today's hearings. I have supported parts of S. 635 in the past, including immediate sanctions, and plan to do so again in the future.

I regret, however, that amidst the strong Sullivan principle that passed the Senate last year I am concerned that the bill in its present form may deny the United States the ability to play a long-term meaningful role in bringing an end to apartheid, but I can however suggest some criteria we ought to keep in mind while reviewing proposals for action.

First, we should remember that it is the South African Government that is the originator and the sustainer of apartheid. Our actions therefore should focus on that Government.

Second, as a corollary to that, we should avoid actions that have an adverse impact on South Africa's black majority. While our long-term objective must be the abolition of apartheid, we must not forget that the short-term economic problems of South Africa's blacks are real and we should seek to avoid actions that contribute to those problems.

Third, our objective is to change policy and practice in South Africa. Sanctions are an appropriate means to that end but we should avoid any punitive approach which, though in the near term makes us feel better, in practice leads to a premature abdication of U.S. influence and responsibility for ending apartheid.

Fourth and finally, American business has made a positive impact in attempting to undermine the ability of the South African Government to deny economic opportunity to its black population. To reinforce that, we should insist that Americans doing business in South Africa uphold and maintain American standards in their own practices and that they make clear their own objection to apartheid. We can impose limitations on those that do not cooperate. It is therefore legitimate to ask American businesses to be an aggressive agent against apartheid in South Africa. However, it is not, in my judgment, legitimate to ask them to bear the full brunt of implementing our policy and to pay the full cost of South Africa failure to change.

The purpose of today's hearings and of those which follow is to examine various proposals for actions against South Africa, particularly those contained in S. 635 which has been referred to this committee. My own study and conclusions will be conducted in the light of the criteria which I have just listed and the testimony we receive.

At the conclusion of our deliberations I hope we will be in a position to move forward on legislation that can obtain broad support from both parties, from both Houses of Congress, and the President.

As I said last year, we have had more than enough rhetoric on the subject of South Africa. Our goal at this point is to change South African policy in a timely manner. That is best achieved through solid, carefully drafted legislation that the vast majority of Americans can support and which the President will sign into law. The alternative is another pointless political exercise that will leave volumes of empty words and little else. That's what I hope we certainly avoid.

Senator Hecht.

OPENING STATEMENT OF SENATOR HECHT

Senator HECHT. Thank you, Mr. Chairman.

I want to take this opportunity to compliment you on holding this hearing today, the first in a series of hearings on proposed legislation to implement sanctions against the Government and the people of South Africa.

Let me begin by saying that I am opposed to the type of legislation before us today which seeks to impose economic sanctions against South Africa. This is not to say that I support the apartheid policies of the South Africa Government because that is far from the truth. These policies are indeed imperfect and as President Reagan has stated, repugnant.

Where my position differs with the advocates of such legislation is the methods and policies the United States should adopt to foster change in this system.

Mr. Chairman, it is a basic fact that the majority of South Africans remain without the fundamental human right of citizenship in their own country. This fact cannot be denied. However, it is important to point out the dramatic progress that has been made over the past decade. Positive changes are occurring in black education and housing, in labor law and trade unionism, in black urban residency rights, the extension of political rights to the colored and Asian community.

There is also the basic fact that South Africa's wide electorate has given solid backing to a government that is committed to peaceful evolutionary change. We should not be imposing broad-based economic sanctions against South Africa. We should be working to encourage the types of positive changes that are occurring there.

Economic sanctions do not work. They never have and, in my opinion, never will. The types of actions suggested by this legislation would only serve to hurt the very people they are designed to assist. By condemning South Africa by withdrawing American investment, the United States would only spawn an armed conflict. We didn't like the Shah of Iran and we ended up with Khomeni. We didn't like Diem and we ended up with a war in Vietnam. South Africa has been our friend. If we reject them, then we could possibly end up with a Communist government.

Thank you, Mr. Chairman.

Senator HEINZ. Senator Hecht, thank you very much.

Senator Cranston.

OPENING STATEMENT OF SENATOR CRANSTON

Senator CRANSTON. Thank you very much, Mr. Chairman.

It's a pleasure to join in welcoming my friends and colleagues, Ted Kennedy and Lowell Weicker, before this committee. I am pleased to join with them as cosponsor of S. 635 and I applaud their bipartisan leadership on the issue of South Africa's apartheid.

As we consider the measure before us today I believe it is essential for us to remember exactly what has brought us here. We are here today because an unspeakable wrong is being committed to millions of human beings each day in South Africa. We are here today because we have a moral obligation to speak and to use such power as we have to act against this wrong.

We are here today to help translate the deep concern expressed by millions of Americans into action and we are here today to advance the national interest of our own country which require us to distance the U.S. Government from the repugnant apartheid regime of South Africa.

I feel very strongly that the time has come for us to move beyond strong words and to enact strong legislation. As one who worked for nearly 2 years in that marathon Export Administration Act conference to try to achieve such legislation, I want to express my admiration to John Heinz for calling these hearings and bringing us to focus on this issue once again. I know he shares my belief that it is time to act.

This need not be a partisan issue and it is not. The Republicans and Democrats alike have come to the conclusion that it is time to enact legislation. The principal purpose of this legislation must be to apply pressure to end apartheid where pressure is most needed—on the white minority of South Africa—to monopolize the political and economic power to oppress 23 million native South African blacks.

We have already made some important progress on this issue in the Senate Foreign Relations Committee. Acting under bipartisan pressures from Senator Mathias, Senator Sarbanes, and myself, the Foreign Relations Committee last month became the first Senate body to adopt a package of economic sanctions against the apartheid regime.

We adopted by an overwhelming 16-to-1 vote what in essence is the Kennedy-Weicker measure before us, except the Foreign Relations Committee bill has a 24-month delay in the application of those sanctions. This was an historic vote and a good beginning. I hope the Banking Committee can try to better this effort with stronger legislation to take effect even more swiftly.

Thank you very much.

Senator HEINZ. Thank you, Senator Cranston.

Senator Mattingly.

OPENING STATEMENT OF SENATOR MATTINGLY

Senator MATTINGLY. Thank you, Mr. Chairman.

I appreciate the opportunity that you and the distinguished ranking member of the committee have provided to comment on one of the truly central issues of human rights and human dignity that confront us in today's world. I applaud the initiative of my

Senate colleagues in introducing S. 635 and although I have significant reservations about several of the bill's major provisions, I have no reservation in standing with its sponsors in recognizing that the United States is morally bound to play a central role in the effort to bring peaceful change in South Africa.

In fact, those of us who have often condemned human rights violations by the Soviet Union perpetrated by the Government against Soviet Jewry and against those who languish in the Gulag should be at the front of the efforts being made to draw attention to the plight of South Africa's blacks and should play a key role in structuring the U.S. response to recent events.

Indeed, it is my hope that such a united, coordinated effort would be applied to the redress of human rights violations no matter where they occur whether it be the Soviet Union, Afghanistan, South Africa, or any other place where such crimes occur.

It goes without saying that the involvement of the President is central to the success of such an effort.

Thank you, Mr. Chairman.

Senator HEINZ. Senator Mattingly, thank you very much.

I'd like to ask our first two witnesses, Senators Kennedy and Weicker, to come up to the witness table. Gentlemen, we welcome you both. We commend you on your legislative initiative, S. 635. We welcome you to this committee. We don't often see you here. I guess perhaps we will not only see more but hear more of you and S. 635 in the weeks to come. This is probably going to be just one of several hearings.

We are somewhat limited today by time constraints. Senator Weicker, I think you or Senator Kennedy can go first.

Senator WEICKER. Mr. Chairman, the initiative came from Senator Kennedy and I would like him to go ahead and testify first.

Senator HEINZ. All right. Senator Kennedy.

STATEMENT OF EDWARD M. KENNEDY, U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. Thank you very much, Mr. Chairman.

I first of all want to express my very deep sense of appreciation to you and to the members of this committee for holding these hearings and for giving an opportunity to Members of the Senate and to others to express themselves on this extremely important issue that so many millions of Americans care very deeply about. I feel, having heard you, Mr. Chairman, and other members of the committee, that it is the sense of this committee that the time for talk has passed and that now is the time for action. The proposal that Senator Weicker and I have introduced, we believe, is a significant but measured legislative proposal to respond to some of the actions that have been taken by the South African Government and to express the concern and real outrage of the Members of Congress and the American people at the continuation of a policy which we find so hostile and alien to every value that we believe in.

I would like, Mr. Chairman, to summarize my statement but include it in its entirety in the record.

In my statement, I outline in some detail what this particular proposal is. First, it prohibits new U.S. bank loans to the Government of South Africa and government entities in that country. Second, it restricts the new investment by U.S. firms in South Africa, including new bank loans to the private sector of that country. Third, it prohibits the importation of the South African gold coin, the krugerrand, into the United States; and finally, it forbids the future sales of computers to the Government of South Africa.

In an addendum, we have outlined in some detail what the economic impact will be on the Government of South Africa, and I would request that it also be made part of the record.

CONDITIONS IN SOUTH AFRICA

Now, Mr. Chairman, I had the opportunity of spending 9 days in South Africa, and I'd like to make just a few general observations about the conditions that I saw there.

First, Mr. Chairman, there is an extraordinary increase in polarization, polarization between the blacks and the whites, polarization between the various groups in that society. That's No. 1.

Two, the active groups in South Africa have become much more radicalized. The concept of using traditional tools of nonviolence to try and achieve political objectives is rapidly disappearing, and there is an increasing reliance on radical solutions in South Africa. That is something that I think is extraordinarily important.

Third, Mr. Chairman, is the increasing hostility toward the United States. My brother, Robert Kennedy, visited South Africa in 1966. At that time the United States was looked on as a model, a way in which those that had been oppressed by apartheid in South Africa could achieve equal opportunity even in South Africa because of the success of the civil rights movement here in the United States where we had courageous church leaders, such as Martin Luther King and many others, who believed in nonviolence. We had courageous business and labor representatives who believed in nonviolence and progress. We had courageous fifth circuit judges appointed by a Republican President who understood the threat to individual rights, and liberties, and were prepared to rule to protect individuals when these rights and liberties were threatened and we had the Constitution of the United States with the 14th amendment to guarantee those rights.

When Robert Kennedy visited South Africa, the United States was recognized as a role model for millions of whites and blacks alike for being able to achieve some of the most basic and fundamental rights. The United States had faced this issue, and we had really set an example for the world.

HOSTILITY TO THE UNITED STATES INCREASING

That concept and model has been crushed, dashed, and destroyed, Mr. Chairman. The United States now is thoroughly and completely identified with the policy of constructive engagement which is, as Bishop Tutu has stated, an unmitigated disaster. Winnie Mendela, the wife of Nelson Mendela, said to me, "Go back and tell the Americans that the policy of constructive engagement is a shoulder to the wheel of apartheid." The hostility to the

United States is increasing dramatically. And the United States, I fear, Mr. Chairman, is in a dangerous position. We have not only lost the rightful position as a moral leader on the questions of rights and liberties, but also we endanger our position in South Africa for the future. South Africa will be free some day and, make no mistake about it, those in that government when it is free are going to ask whether the United States was the last country to go down with apartheid. And it certainly appears to blacks in South Africa today that this is the case.

During my trip, I saw the faces of apartheid in a number of different ways, and I'll just describe them very briefly.

In Soweto, in the single sex barracks, there are individuals who have lived in those barracks for 20 years, separated from their families with the exception of 3 weeks out of every year, by rule of law because of the color of his skin.

In Mathopostad, citizens whose families have lived in that rural community for over 140 years go to bed every night fearing that the trucks are going to come, and that they are going to be forcibly removed and resettled in places like Onverwacht, where over 250,000 people have been settled, where the unemployment is often in excess of 50 percent, and which has the highest infant mortality rate not only in Africa but in the world, in the shadow of some of the finest medical facilities in the world.

I met with black students who are denied equality—or even close to equality—in terms of education. I met individuals who had been forcibly detained with no right to trial.

The faces of apartheid, Mr. Chairman, are reflected in the pass laws and the influx control laws, the Group Areas Act and the whole range of different legal mechanisms which operate in every aspect of their lives, in social, political, economic ways and in the judicial process in South Africa. This face of apartheid, Mr. Chairman, has not been improved in the period of the last 40 years but actually gotten uglier.

I read this morning about the change in the laws permitting interracial marriage. It is a step in the right direction but it is too little, too late, Mr. Chairman. And for those who talk about constructive engagement as being something which has moved the process, I ask them, has South Africa started to dismantle the policy of denationalization? They have not. Ask them, have they started to dismantle the pass laws? They have not. Have they started to dismantle the influx control laws? They have not. And, Mr. Chairman, in asking whether there has been progress, I don't believe that there is any individual in that country who believes that there's been progress until you stop this process of dehumanization.

The final point I would just like to make, Mr. Chairman, has to do with the question about economic progress in South Africa, and what we have seen during recent times.

The fact is that South Africa has had a relative degree of prosperity during recent years, and yet there has been no change in the essential aspects of apartheid—none—virtually none.

WHIP AND LASH OF APARTHEID

For those that are concerned about what possible implications there would be about this legislation, I found to an extraordinary degree that the citizens who are being denied, which is close to 90 percent of the people in that country, when they hear about the fact that potentially they may lose some employment opportunity, they say:

> Our children are suffering today because they are dying before they reach childhood. We are suffering today because we are separated from our families. We are suffering today because we fear being uprooted. We are suffering today because we have no political rights and we're sent to the homelands. We are suffering today because we still have high unemployment in these various areas. We just hope, Senator, that you will tell the Americans that we hope our children will not have to fear the whip and the lash of apartheid. And we would hope that the United States will take the steps to try and permit us to resolve our own problems.

They are going to have to solve their own problems, but there is absolutely no reason why the United States ought to have a continued policy of helping and assisting apartheid. This legislation is aimed at the Government of South Africa, which is the entity that defends and administrates the policy of apartheid. It does not deal with some of the other issues that are in the public dialog and discussion, such as disinvestment.

In my statement I comment on the Sullivan principles and their impact on American industry, and I'll be glad to respond to any other questions on that.

I would hope this committee would see an early consideration of this legislation and a successful passage of it, and I would ask that my full statement be included in the record.

Senator **Heinz**. Without objection, Senator Kennedy, thank you for your statement.

[The complete prepared statement and copy of proposed bill S. 635 follow:]

Statement of Senator Edward M. Kennedy

Mr. Chairman, I want to thank you for the opportunity to appear before you today to testify in support of the Anti-Apartheid Act of 1985, S. 635. I also want to compliment you—and your distinguished ranking member, Senator Proxmire—on the speed with which you have turned your attention to this important legislation. I know that you share our strong feelings about the system of apartheid, and I hope you will agree with me that today it is not enough to have strong feelings or to make strong statements. It is time for the United States of America to match our words with deeds.

Your decision to hold these hearings today—and to hold further hearings on this legislation at a later date—sends a signal to the Government of South Africa that apartheid is not a partisan issue in this country, that the people of the United States are in fact united and determined in their commitment to do what they can to assist in the effort to achieve peaceful change and an end to apartheid in South Africa.

The Anti-Apartheid Act of 1985 has four basic provisions:

First, it prohibits new United States bank loans to the Government of South Africa and to Government entities in that country:

Second, it restricts new investment by U.S. firms in South Africa, including new bank loans to the private sector of that country;

Third, it prohibits the importation of South African gold coins, krugerrands, into the United States; and

Finally, it forbids the future sale of computers to the Government of South Africa.

We have prepared fact sheets on the impact of these measures on American financial institutions as well as their effect on the South African economy, and I would like to submit this material for the record for future reference.

As you know, I spent 9 days inside South Africa last January at the invitation of Bishop Desmond Tutu and Rev. Allan Boesak. The purpose of my trip was to examine the conditions of life for black people living under apartheid inside South Africa, and to see how the United States can best use its influence in the effort to achieve peaceful change and racial harmony within that country. My experience there, after traveling through South Africa and talking to a wide spectrum of black and white South Africans, convinces me that this legislation is necessary, and that it is the minimum that Congress should do in moving the United States toward a more active and effective policy to end apartheid in South Africa.

During my trip, I found that the polarization between the racial groups in South Africa has reached dangerous proportions. The fear and insecurity among whites is pervasive; the suspicion and distrust among blacks is deep and now almost impossible to overcome. The situation is deteriorating, and the escalating level of violence in that society, which in the past year has taken the lives of 250 black people, may now be reaching the point of no return. The General Secretary of the South African Council of Churches, Rev. Beyers Naude, predicted last week that, "This year will bring more polarization between the white ruling classes and the majority of the people, more clashes between the police and striking students and workers, more injuries and deaths."

In addition to this increasing polarization, there is also a much greater willingness in the black community to embrace radical solutions, to reject nonviolence, to reject coalitions with whites, to reject democratic ideals and Western economic models—and worst of all for the future of American policy in Africa, to reject the United States.

It is no secret that the United States is now despised by large numbers of blacks inside South Africa. Twenty years ago, when Robert Kennedy traveled to South Africa, the United States was welcomed as an ally in the struggle for racial justice in that country, but we are now perceived to be participants in the oppression of the black majority. The United States is seen by black South Africans as the South African Government's closest friend in the international community, and the policy of "constructive engagement" is seen as providing aid and comfort to the architects of apartheid. As Winnie Mandela said to me during our visit, "Tell the people of the United States that constructive engagement is just another shoulder to the wheel of apartheid." And as Beyers Naude has warned: "Do not be surprised if the anger of black South Africans eventually turns to hatred or rejection of an American presence in Africa."

In proposing this legislation, we have been guided by a number of judgments.

First, the policy of "constructive engagement" and quiet diplomacy has been, to use Bishop Tutu's words, "an unmitigated disaster." That policy must be ended. As the President of Harvard University, Derek Bok, recently wrote: "Our current policies are easily mistaken for tacit acquiescence in a status quo that offends our most precious ideals and threatens to deteriorate in growing violence and instability." This legislation is designed to provide the United States with an active, not a passive, policy against apartheid.

Second, to implement this policy, the United States should take immediate, concrete steps to demonstrate this country's vigorous opposition to apartheid. Those steps must be practical, not just rhetorical, and they must be strong enough to communicate the depth of our Nation's commitment. This legislation contains such measures.

Third, the United States should direct its energies and actions primarily toward changing the policies of the Government of South Africa. While there is much to be said for efforts to improve the conduct of American corporations doing business inside South Africa and to use those corporations as instruments of change inside that country, such efforts are inevitably limited in their scope, indirect in their effects and slow in achieving broad results. I admire the extraordinary work that Rev. Leon Sullivan and his signatory companies have done over the past 7 years. But it is the Government of South Africa that is the primary enforcer of apartheid; without fundamental change in that Government's approach, there can be little hope for peaceful change.

Fourth, we must recognize that the United States cannot dictate to the people of South Africa, and we cannot impose a solution to South Africa's problems from the outside. South Africans—black and white—will make the decisions that determine that nation's future. If the United States wants to encourage reform there, it must begin to distance itself more clearly from apartheid, and to align itself more closely with the initiatives of the black majority. We should also support the pressures for peaceful change coming from the business community and opposition leaders in Parliament. Our Nation's policies should signal our Nation's support for the churches, the independent labor unions, the UDF, and community organizations committed to peaceful change. Our legislation is consistent with this approach.

Fifth, we should pursue policies that do not inflict significant hardships on innocent persons. We recognize that there are those who oppose any economic sanctions because of the potentially adverse effect on the black population of South Africa. This legislation has been carefully designed to avoid any such impact. This legislation does not call for divestment; it will not throw any blacks out of work or impede the progress of independent black trade unions.

Finally, the United States should take steps to reduce the active complicity of Americans in the apartheid system. While we can debate whether the presence of American corporations inside South Africa has been helpful in the effort to end apartheid, the United States should not permit further direct funding of the apartheid system—either through loans to the Government of South Africa, or through the purchase of South African kruggerands in the United States. Every bank loan to the Government, every purchase of a krugerrand, is a symbolic—and economic—gesture of American support for apartheid, and the time has come to halt such support.

Moreover, the history of South Africa refutes the argument that an ever expanding South African economy is the surest path to peaceful change and political reform. As Prof. Stanley Greenberg of Yale has written: "This easy association between economic growth and political reform lacks an historic foundation in South Africa; more than a century of industrial development has been accompanied by more, not less, racial discrimination."

Contrary to official pronouncements by the South African Government, the United States has substantial leverage inside South Africa. While I was in South Africa, I heard a universal refrain from Government Ministers, "We do not care what the United States does or says. We will decide for ourselves, and we will proceed at our own pace." But their extreme interest in and concern about events inside the United States, with the demonstrations at the South African Embassy, and with the divestment campaign, was evidence that most South Africans care very deeply about what Americans think, do and say about apartheid. Sadly, we are perceived as the last friend they have, their last chance to hold the line against substantial change.

The United States cannot have it both ways. We cannot remain a friend of apartheid, and also remain true to our founding principles. The Anti-Apartheid Act of 1985 will send an important message, not only to the 23 million black people of South Africa, but to oppressed people throughout the world that America is truly on the side of human rights, liberty and justice for all.

Before concluding, I would like to address the arguments of some apologists for the South African Government that there has in fact been change inside South Africa, and that the white leadership of that country is committed to fundamental reform. My experience in South Africa suggests otherwise. The conditions of life for most black people in South Africa are appalling and have become worse, not better, in recent years, and the system of apartheid has become more pervasive and pernicious than ever before.

Black people in South Africa are still barred from any significant role in the economic, political, or social life of the country for no reason other than that they are black. For black South Africans, color is still the single most powerful determinant of their lives. Where they live, where and how they travel, what they read or see or hear, who they meet, how they are educated, what they do for a living, how much money they earn, what property they own, what kind of medical care is available, where they worship, what they can hope to achieve for themselves and for the members of their families—all of these fundamental issues in the life of any human being are, for black South Africans, still sharply curtailed and carefully controlled by the system of apartheid. Racism is the overwhelming fact of life for every black person in South Africa today. In this respect, there has been no change, and certainly there has been no improvement, in the lives of most black people in South Africa over the past 40 years. And in recent years, the structures and the strictures of apartheid have increased, not declined. The policies and institutions of apartheid have become more sophisticated, more effective and more entrenched. Few blacks in South Africa today would dispute the notion that apartheid as a political and social system of institutionalized racism is now worse than it ever was, and that the mechanisms of control are more comprehensive and more effective than ever before.

The system of migratory labor now operates with computerized efficiency to guarantee a large pool of poor, unskilled, low-cost black workers for the large, affluent white communities in the major cities. Black families are forced to live in inhospitable, economically unproductive homelands, while the male workers live for 49 weeks of the year in single-sex, barrack-style hostels, like the Nancefield hostel that I visited in Soweto. These hostels are located in black townships just outside the urban centers of the nation, and the workers are transported each day into the city to perform menial tasks. This sophisticated and technologically well-ordered system of state-run labor divides families, depresses wages and guarantees an ever-ready, trouble-free supply of plentiful and cheap manual labor to service the needs of the white society. Individual records of all registered black South African workers have been logged into computers, thereby guaranteeing a high degree of political and economic reliability for potential employers.

I visited a man who had lived for 20 years in the Nancefield Hostel, where the living conditions are a disgrace. He was able to see his family in the Ciskei once a year, and in his 20 years of labor, he had been able to save only $265. Neither the policy of "constructive engagement" nor the Government's so-called program of reform has changed this system of migratory labor.

In addition, the resettlement camps continue to grow, with entire areas like the Ciskei being transformed into one immense resettlement camp. In these camps, such as the one I visited in Onverwacht, unemployment hovers around 50 percent, and the conditions of daily life are inhuman. In some camps, the climate is so harsh, the people so poor, the shelter so sparse and the basic human services so meager that the infant mortality rate for children during their first year of life frequently exceeds 40 percent.

The pass laws still operate and are still enforced with fines and jail terms, but these laws are now applied with an unprecedented efficiency achieved only by computers. The number of arrests for violations of pass laws doubled from 1980 to more than 200,000 annually in 1982 and 1983. Scores of black people are sentenced every morning in the courts of Johannesburg to "10 rands or 10 days."

Until recently, forced relocations of black communities continued to occur, so that many families that had lived in their towns for four generations or more—like those I met in Mathopostad—face the daily possibility that the soldiers will arrive with trucks and bulldozers, and the entire community will be uprooted and moved to a strange and distant place. Since 1960, under this policy, 3½ million blacks have been forcibly removed from "white areas."

The homelands policy and the pernicious practice of "denationalizing" black South Africans continues. Since 1976, more than 8 million Africans have been deprived of their South African citizenship because of this policy, and between 1960 and 1980, the proportion of the African population officially residing in the homelands increased from 40 to 53 percent.

Politically, apartheid is now part of the constitutional structure of the South African state. Before the new constitution was adopted, the exclusion of blacks from participation in the political life of the country was a matter of legislation that could be modified or repealed by Parliament; but blacks are now excluded constitutionally from playing any role in the national government. For blacks, the new constitution was a major step backward, a further entrenchment of apartheid.

The South African Government argues that the conditions of life for black South Africans are better than for black people in other African nations. Even if this were true—and in health care, employment, and poverty levels among rural blacks, it is demonstrably untrue—it is irrelevant for black South Africans. They regard themselves as South African citizens entitled to have a fair share in the economic benefits that accrue to the nation as a whole. They justifiably compare themselves to other South African citizens—and in that comparison there is no real dispute. In contrast to the comfortable lives of whites in South Africa, blacks live in squalor and misery.

In fact, the economic conditions for most black people have become worse, not better in recent years. According to the Carnegie Foundation's Second Inquiry on Poverty in South Africa, there has been an increase in poverty among South Africa's rural black population since 1960. According to this study the dimensions of poverty inside South Africa have been "decisively affected by apartheid," particularly the land laws, the pass laws, and the housing policies of the Government. For example, the number of people made destitute by landlessness and unemployment rose from 250,000 in 1960 to 1.43 million in 1980, and the number of people living below the poverty line increased from 4.9 million to 8.9 million. The proportion of the population receiving no visible income at all rose from 5 to 13 percent between 1960 and 1980. According to the Director of the Carnegie Inquiry, Prof. Francis Wilson of the University of Capetown, "The people who are poor in this country are poor because they are on the wrong side of apartheid."

SUMMARY OF S. 635—THE ANTI-APARTHEID ACT OF 1985

First, it prohibits new United States bank loans to the Government of South Africa or to any other governmental entities in South Africa, such as the so-called homelands or any Government-controlled corporations. This prohibition does not apply to loans for educational, housing or health facilities available to all South Africans on a nondiscriminatory basis.

Second, it prohibits new investment by U.S. firms in South Africa. Under this provision, the establishment of new enterprises or the expansion of existing enterprises in South Africa would be prohibited. New loans from United States banks to private, nongovernmental entities in South Africa would also be prohibited. Reinvestment of earnings from existing business operations in South Africa would not be affected. These provisions are subject to a waiver, as described below, based on progress toward ending apartheid.

Third, it prohibits the importation of South African gold coins, called "krugerrands," into the United States. Krugerrands already in circulation in this country would not be affected. This restriction is also subject to a waiver, as described below, based on progress toward ending apartheid.

Fourth, it prohibits United States computer sales to the Government of South Africa or to any governmental entities; the prohibition also covers spare parts and services for computers.

Waiver: The President, with the consent of Congress, may waive the second and third prohibitions, relating to new investment and the importation of South African krugerrands into the United States, if any one of the following eight steps toward ending apartheid is met:

(1) South Africa ends its discriminatory migratory labor system, and permits the families of black employees to live near their place of employment.

(2) South Africa ends its restrictive employment system, and permits blacks to seek jobs in any part of South Africa and to live wherever they find jobs.

(3) South Africa eliminates its denationalization policy, by which blacks are denied citizenship in South Africa, and are made involuntary citizens of the "homelands."

(4) South Africh ends its forced relocation policy, under which blacks are forcibly uprooted from areas designated for whites.

(5) South Africa eliminates all residence restrictions based on race or ethnic origin.

(6) South Africa enters negotiations with black leaders to end apartheid and achieve full participation of blacks in the social, political, and economic life of that country.

(7) An internationally recognized settlement for Namibia is achieved.

(8) South Africa frees all political prisoners.

International Cooperation: Finally, the legislation directs the President to work through the United Nations and with other countries to persuade the world community to adopt similar economic sanctions against South Africa.

House Bill: Identical legislation (H.R. 1460) has been introduced in the House of Representatives by Congressman Bill Gray (D., PA).

FACT SHEET ON THE IMPACT OF THE ANTI-APARTHEID ACT OF 1985

BANK LOANS TO THE GOVERNMENT

The total value of all United States loans to all South African borrowers for 1984 is roughly $4.6 billion. The top nine U.S. banks account for $2.9 billion.

Loans outstanding in 1984 to the South African public sector by all United States banks totaled $374 million. United States bank financing for the South African public sector has declined by more than 50 percent since 1978.

United States lending to the South African public sector represents only 5 percent of South African public debt to foreign lenders.

At least two other countries—Japan and Sweden—have adopted policies prohibiting their financial institutions from extending credit to South African Government entities.

Many U.S. educational institutions, e.g., Harvard, Yale, Columbia and Stanford, have divested holdings in banks that extend credit to the South African Government.

And 26 U.S. banks have independently adopted a policy prohibiting bank loans to the South African public sector. Among those banks are: Chase Manhattan, Bank of America, Chemical Bank, Bankers Trust, First National Bank of Boston, Mellon, First National Bank of Atlanta, Citibank, Morgan Guaranty Trust, Bank of Boston, and First National Bank of North Carolina.

COMPUTER SALES TO THE SOUTH AFRICAN GOVERNMENT

The total sales of United States computers to South African entities in 1984--public and private—was $184.6 million. United States companies dominate the South African computer market, supplying 70 percent of all computers to that country.

IBM is the single largest U.S. computer company doing business in South Africa, and it has the largest share of the South African computer market. IBM has stated that, of all their computer sales in South Africa, less than one-sixth of those sales are to the South African Government.

If other companies adhere to the IBM pattern, total United States sales to the South African Government would be approximately $30.8 million annually.

NOTE.—The United States currently reviews computer sales to South African Government departments that administer apartheid to determine whether the computers in question will be used to enforce apartheid, and the U.S. Government also reviews computer sales to South Africa's military and police to determine whether they will contribute to military and police functions.

But these controls are not sufficient.

In 1982, the administration terminated all controls on sales of a wide range of personal computers to South African military, police, and other agencies that enforce apartheid. And, under these current controls, a number of highly controversial computer licenses have been granted. For example, the U.S. licensed sale of two computers useful for nuclear weapons development to a South African Government controlled research institute and the sale of a sophisticated computer to an arms manufacturer. South Africa has also become a channel for illegal computer sales to the Soviet Union. A Defense Department official recently commented that a sophisticated computer transhipped from South Africa to Germany destined for the U.S.S.R. should never have been sold to South Africa in the first place.

This legislation, if enacted, is only slightly stronger than the provision that existed in 1982.

KRUGERRANDS

Krugerrands are named after the "father" of apartheid, Paul Kruger, and are the best known coin in the world.

Krugerrands were first minted in 1967 and were the first gold coin to contain exactly one ounce of gold. They are the most widely held gold coin in the world. The availability of krugerrands makes gold ownership more accessible to more investors and thereby increases demand for one of South Africa's major exports.

The coin is a joint effort of the South African Chamber of Mines—a consortium of mining companies—and the South African Government. They sell at a 3- to 4-percent premium over the price of an equivalent amount of gold. The Government taxes the production and sale of gold, through which it obtains a significant proportion of its revenue. In 1981, the South African Government received 24 percent of its revenue from gold sales, 15 percent in 1982. The variation is due to the volatile nature of gold prices.

The South African Government earns 40–50 percent of its foreign exchange through gold sales.

The coins are distributed worldwide through 14 "primary" distributors. Three of those distributors are in the United States. According to the U.S. Treasury, for the 5-year period 1973 through 1983, the United States accounted for an average 37 percent of all South African coin exports with an average value of $558.8 million.

Many U.S. banks, such as Citibank, have already halted trading in krugerrands.

In 1983, the sale of krugerrands inside the United States amounted to $450 million. In 1984, the sale of krugerrands inside the United States jumped to approximately $600 million.

NEW INVESTMENT IN SOUTH AFRICA

In 1983, direct United States investment in South Africa—measured in the current value of present and past investment in plants and equipment—amounted to $2.3 billion, second only to direct investment by Great Britain. This was down from $2.6 billion in 1982, probably because of the ongoing recession in South Africa and, at least in part, due to anti-apartheid activity in the United States. (In 1970, United States investment in South Africa was $864 million.)

The current level of direct United States investment in South Africa represents approximately 1 percent of all American foreign investment.

There are 284 U.S. companies operating in South Africa; 57 are among the top 100 largest firms in the United States, according to Fortune magazine. 123 are signatories to the Sullivan principles.

United States firms reportedly control 70 percent of the South African computer industry, 45 percent of the oil industry, and 33 percent of the auto industry.

Last year, American companies took out more money from South Africa than they invested. In 1984, there was a net flow of $49 million from South Africa to the United States. This was in the form of profits and dividends to U.S. companies doing business in South Africa.

The manufacturing sector accounts for 45 percent of U.S. investment.

North and South American nations account for approximately 25 percent of all foreign investment in South Africa. The EEC accounts for 63 percent.

The ultimate impact of a freeze on new investment can only be measured on a company-by-company basis. Many U.S. companies operating inside South Africa—such as G.M., Ford, Kodak, Kimberly Clark, and Control Data—have already adopted policies of no new investment in South Africa.

Japan, Norway, and Sweden have adopted policies prohibiting new investment in South Africa.

99TH CONGRESS
1ST SESSION

S. 635

To express the opposition of the United States to the system of apartheid in South Africa, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 7 (legislative day, FEBRUARY 18), 1985

Mr. KENNEDY (for himself, Mr. WEICKER, Mr. PROXMIRE, Mr. SARBANES, Mr. LEVIN, Mr. KERRY, Mr. MOYNIHAN, Mr. HART, and Mr. RIEGLE) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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A BILL

To express the opposition of the United States to the system of apartheid in South Africa, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Anti-Apartheid Act of 1985".

SEC. 2. POLICY DECLARATIONS.

The Congress makes the following declarations:

(1) It is the policy of the United States to encourage all nations to adopt political, economic, and social

policies which guarantee broad human rights, civil liberties, and individual economic opportunities.

(2) It is the policy of the United States to condemn and seek the eradication of the policy of apartheid in South Africa, a doctrine of racial separation under which rights and obligations of individuals are defined according to their racial or ethnic origin.

SEC. 3. PROHIBITION ON LOANS TO THE SOUTH AFRICAN GOVERNMENT.

(a) In General.—No United States person may make any loan or other extension of credit, directly or through a foreign affiliate of that United States person, to the Government of South Africa or to any corporation, partnership, or other organization which is owned or controlled by the Government of South Africa, as determined under regulations which the President shall issue.

(b) Exception for Nondiscriminatory Facilities.—The prohibition contained in subsection (a) shall not apply to a loan or extension of credit for any educational, housing, or health facility which—

(1) is available to all persons on a totally nondiscriminatory basis, and

(2) is located in a geographic area accessible to all population groups without any legal or administrative restriction.

(c) EXCEPTION FOR PRIOR AGREEMENTS.—The prohibition contained in subsection (a) shall not apply to any loan or extension of credit for which an agreement is entered into before the date of the enactment of this Act.

(d) ISSUANCE OF REGULATIONS.—The President shall issue the regulations referred to in subsection (a) not later than ninety days after the date of the enactment of this Act.

SEC. 4. RESTRICTIONS ON NEW INVESTMENTS (INCLUDING BANK LOANS).

(a) PRESIDENT TO ISSUE REGULATIONS.—The President shall, not later than ninety days after the date of the enactment of this Act, issue regulations prohibiting any United States person from making, directly or through a foreign affiliate of that United States person, any investment (including bank loans) in South Africa.

(b) EXCEPTIONS FROM PROHIBITION.—The prohibition contained in subsection (a) shall not apply to—

(1) an investment which consists of earnings derived from a business enterprise in South Africa established before the date of the enactment of this Act and which is made in that business enterprise; or

(2) the purchase, on a securities exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934, of securities in a business enterprise described in paragraph (1).

SEC. 5. GOLD COINS.

(a) PROHIBITION.—No person, including a bank operating under the laws of the United States, may import into the United States any South African krugerrand or any other gold coin minted in South Africa or offered for sale by the Government of South Africa.

(b) UNITED STATES DEFINED.—For purposes of this section, the term "United States" includes the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

SEC. 6. WAIVERS.

(a) AUTHORITY OF THE PRESIDENT.—

(1) INITIAL WAIVER.—The President may waive the prohibitions contained in sections 4 and 5 for a period of not more than twelve months if—

(A) the President determines that one or more of the conditions set forth in subsection (b) are met,

(B) the President submits that determination to the Congress, and

(C) a joint resolution is enacted approving the President's determination.

(2) ADDITIONAL WAIVERS.—The President may waive the prohibitions contained in sections 4 and 5 for

additional six-month periods if, before each such waiver—

(A) the President determines that an additional condition set forth in subsection (b) has been met since the preceding waiver under this subsection became effective,

(B) the President submits that determination to the Congress, and

(C) a joint resolution is enacted approving the President's determination.

(b) STATEMENT OF CONDITIONS.—The conditions referred to in subsection (a) are the following:

(1) FAMILY HOUSING NEAR PLACE OF EMPLOYMENT.—The Government of South Africa has eliminated the system which makes it impossible for black employees and their families to be housed in family accommodations near the place of employment.

(2) RIGHT TO SEEK EMPLOYMENT.—The Government of South Africa has eliminated all policies that restrict the rights of black people to seek employment in South Africa and to live wherever they find employment in South Africa.

(3) ELIMINATING DENATIONALIZATION.—The Government of South Africa has eliminated all policies

that make distinctions between the South African nationality of blacks and whites.

(4) ELIMINATING REMOVALS.—The Government of South Africa has eliminated removals of black populations from certain geographic areas on account of race or ethnic origin.

(5) ELIMINATING RESIDENCE RESTRICTIONS.—The Government of South Africa has eliminated all residence restrictions based on race or ethnic origin.

(6) NEGOTIATIONS FOR NEW POLITICAL SYSTEM.—The Government of South Africa has entered into meaningful negotiations with truly representative leaders of the black population for a new political system providing for the full national participation of all the people of South Africa in the social, political, and economic life in that country and an end to discrimination based on race or ethnic origin.

(7) SETTLEMENT ON NAMIBIA.—An internationally recognized settlement for Namibia has been achieved.

(8) FREEING POLITICAL PRISONERS.—The Government of South Africa has freed all political prisoners.

(c) PROCEDURES FOR CONSIDERATION OF JOINT RESOLUTIONS.—

(1) REFERRAL OF JOINT RESOLUTIONS.—All joint resolutions introduced in the House of Representatives and the Senate shall be referred immediately to the appropriate committees.

(2) COMMITTEE DISCHARGE.—If the committee of either House to which a joint resolution has been referred has not reported it at the end of thirty days after its introduction, the committee shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter.

(3) CONSIDERATION OF RESOLUTIONS.—A joint resolution under this subsection shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and passage of joint resolutions unter this subsection, it shall be in order for the Committee on Rules of the House of Representatives (notwithstanding the provisions of clause 4(b) of rule XI of the Rules of the House of Representatives) to present for immediate consideration, on the day reported, a resolution of the House of Representatives providing procedures for the consideration of a joint resolution under this subsection similar to the procedures

set forth in section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976.

(4) RECEIPT OF RESOLUTIONS FROM THE OTHER HOUSE.—If before the passage by one House of a joint resolution of that House, that House receives a joint resolution with respect to the same matter from the other House, then—

(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(B) the vote on final passage shall be on the joint resolution of the other House.

(5) COMPUTATION OF LEGISLATIVE DAYS.—In the computation of the period of thirty days referred to in paragraph (2) of this subsection, there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain or because of an adjournment of the Congress sine die.

(6) JOINT RESOLUTION DEFINED.—For purposes of this subsection, the term "joint resolution" means a joint resolution the matter after the resolving clause of which is as follows: "That the Congress, having received on   a determination of the President under section 6(a) of the Anti-Apartheid Act of 1985,

approves the President's determination.", with the date of the receipt of the determination inserted in the blank.

SEC. 7. EXPORTS TO SOUTH AFRICAN GOVERNMENT.

Section 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2405) is amended by adding at the end the following:

"(l) EXPORTS TO SOUTH AFRICA.—(1) No computers, computer software, or goods or technology intended to service computers may be exported, directly or indirectly, to or for use by the Government of South Africa or any corporation, partnership, or other organization which is owned or controlled by the Government of South Africa.

"(2) For purposes of paragraph (1), the term 'computer' includes any computer that is the direct product of technology of United States origin.

"(3) The prohibition contained in paragraph (1) shall not apply to donations of computers to primary and secondary schools.

"(4) The termination provisions contained in section 20 of this Act shall not apply to this section, or to sections 11 and 12 of this Act to the extent such sections apply to violations of, and the enforcement of, this subsection.".

SEC. 8. REGULATORY AUTHORITY.

The President shall issue such regulations, licenses, and orders as are necessary to carry out this Act.

SEC. 9. ENFORCEMENT AND PENALTIES.

(a) Authority of the President.—The President shall take the necessary steps to ensure compliance with the provisions of this Act and any regulations, licenses, and orders issued to carry out this Act, including establishing mechanisms to monitor compliance with this Act and such regulations, licenses, and orders. In ensuring such compliance, the President may conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation.

(b) Penalties.—

(1) For persons other than individuals.—Any person, other than an individual, that violates the provisions of this Act or any regulation, license, or order issued to carry out this Act shall be fined not more than $1,000,000.

(2) For individuals.—

(A) In general.—Any individual who violates the provisions of this Act or any regulation, license, or order issued to carry out this Act shall be fined not more than $50,000, or imprisoned not more than five years, or both.

(B) PENALTY FOR SECTION 5.—Any individual who violates section 5 of this Act or any regulation issued to carry out that section shall, in lieu of the penalty set forth in subparagraph (A), be fined not more than five times the value of the krugerrands or gold coins involved.

(c) ADDITIONAL PENALTIES FOR CERTAIN INDIVIDUALS.—

(1) IN GENERAL.—Whenever a person commits a violation under subsection (b)—

(A) any officer, director, or employee of such person, or any natural person in control of such person who knowingly and willfully ordered, authorized, acquiesced in, or carried out the act or practice constituting the violation, and

(B) any agent of such person who knowingly and willfully carried out such act or practice, shall be fined not more than $10,000, or imprisoned not more than five years, or both

(2) EXCEPTION FOR CERTAIN VIOLATIONS.—Paragraph (1) shall not apply in the case of a violation by an individual of section 5 of this Act or of any regulation issued to carry out that section.

(3) RESTRICTION ON PAYMENT OF FINES.—A fine imposed under paragraph (1) on an individual for an act or practice constituting a violation may not be paid, directly or indirectly, by the person committing the violation itself.

SEC. 10. NEGOTIATIONS.

The President shall, by means of both bilateral and multilateral negotiations, including through the United Nations, attempt to persuade the governments of other countries to adopt restrictions on new investment (including bank loans) in South Africa, on bank loans and computer sales to the South African Government, and on the importation of krugerrands. The President shall submit annual reports to the Congress on the status of negotiations under this section.

SEC. 11. TERMINATION OF PROVISIONS OF ACT.

(a) DETERMINATION OF ABOLITION OF APARTHEID.—If the President determines that the system of apartheid in South Africa has been abolished, the President may submit that determination, and the basis for the determination, to the Congress.

(b) JOINT RESOLUTION APPROVING DETERMINATION.—Upon the enactment of a joint resolution approving a determination of the President submitted to the Congress under subsection (a), the provisions of this Act, and all regulations, licenses, and orders issued to carry out this Act, shall terminate.

(c) DEFINITION.—For purposes of subsection (a), the "abolition of apartheid" shall include—

(1) the repeal of all laws and regulations that discriminate on the basis of race; and

(2) the establishment of a body of laws that assures the full national participation of all the people of South Africa in the social, political, and economic life in that country.

SEC. 12. DEFINITIONS.

For purposes of this Act—

(1) INVESTMENT IN SOUTH AFRICA.—The term "investment in South Africa" means establishing, or otherwise investing funds or other assests in, a business enterprise in South Africa, including making a loan or other extension of credit to such a business enterprise.

(2) UNITED STATES PERSON.—The term "United States person" means any United States resident or national and any domestic concern (including any permanent domestic establishment of any foreign concern), and such term includes a bank organized under the laws of the United States:

(3) SOUTH AFRICA.—The term "South Africa" includes—

(A) the Republic of South Africa,

(B) any territory under the administration, legal or illegal, of South Africa, and

(C) the "bantustans" or "homelands", to which South African blacks are assigned on the basis of ethnic origin, including the Transkei, Bophuthatswana, Ciskei, and Venda.

(4) FOREIGN AFFILIATE.—A "foreign affiliate" of a United States person is a business enterprise located in a foreign country, including a branch, which is controlled by that United States person.

(5) CONTROL.—A United States person shall be presumed to control a business enterprise if—

(A) the United States person beneficially owns or controls (whether directly or indirectly) more than 50 per centum of the outstanding voting securities of the business enterprise;

(B) the United States person beneficially owns or controls (whether directly or indirectly) 25 per centum or more of the voting securities of the business enterprise, if no other person owns or controls (whether directly or indirectly) an equal or larger percentage;

(C) the business enterprise is operated by the United States person pursuant to the provisions of an exclusive management contract;

(D) a majority of the members of the board of directors of the business enterprise are also members of the comparable governing body of the United States person;

(E) the United States person has authority to appoint a majority of the members of the board of directors of the business enterprise; or

(F) the United States person has authority to appoint the chief operating officer of the business enterprise.

(6) LOAN.—The term "loan" includes an extension of credit as defined in section 201(h) of the Credit Control Act (12 U.S.C. 1901(h)).

(7) BANK.—The term "bank" means—

(A) any depository institution as defined in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)),

(B) any corporation organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611 et seq.),

(C) any corporation having an agreement or undertaking with the Federal Reserve Board under section 25 of the Federal Reserve Act (12 U.S.C. 601 et seq.), and

(D) any bank holding company as defined in section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(a)).

(8) BUSINESS ENTERPRISE.—The term "business enterprise" means any organization, association, branch, or venture which exists for profitmaking purposes or to otherwise secure economic advantage.

(9) BRANCH.—The term "branch" means the operations or activities conducted by a person in a different location in its own name rather than through an incorporated entity.

(10) POLITICAL PRISONER.—The term "political prisoner" means any person in South Africa who is incarcerated or persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion, but the term "political prisoner" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

SEC. 13. APPLICABILITY TO EVASIONS OF ACT.

This Act and the regulations issued to carry out this Act shall apply to any person who undertakes or causes to be undertaken any transactions or activity with the intent to evade this Act or such regulations.

SEC. 14. CONSTRUCTION OF ACT.

Nothing in this Act shall be construed as constituting any recognition by the United States of the homelands referred to in section 12(3)(C) of this Act.

Senator HEINZ. There will undoubtedly be a lot of questions both for you and Senator Weicker but I'd like to call on Senator Weicker first for his comments and testimony.

STATEMENT OF LOWELL P. WEICKER, U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator WEICKER. Mr. Chairman, thank you very much, one, for granting the hearing and, two, for your comments and the comments of the other members of the committee.

I'd also like to express appreciation to Senator Kennedy not just for the legislation before you but, very frankly, for having the courage to take the trip he did. Some people have said that on more than one occasion that trip could not be termed a political success for Senator Kennedy. I would point out to you that it made the very point that had to be made, that unless we do act that indeed moderation will not be the resolution of this problem because the difficulties that he encountered were those difficulties engendered by people who don't want a moderate solution.

So the fact that he had his presence there tested out—the climate, and believe me, that climate, due in large measure to our inaction, has changed drastically in the last several decades. I am very admiring of that trip and I think the trip itself teaches us just how urgent our mission is.

I would like to use my brief time this morning to provide an historical and factual background for the committee which establishes the context in which we should act.

IGNORANCE OF THE HISTORY OF SOUTH AFRICA

It is the opinion of this Senator that ignorance of the history of South Africa and misconceptions about it have prevented the American people from taking a firm and unequivocal stand against the system of apartheid which relegates 23 million South African blacks to subhuman status. There are too many people walking the streets of our Nation today that indicate:

> Well, this is really no different than our difficulties at times of the civil rights movements here in the United States and let them work themselves out of this situation.

Well, there's a big difference and I'd like to highlight that difference today because at least let's act within the context of historical fact.

In a recent opinion editorial piece in the New York Times, Elie Wiesel, who has written so powerfully and eloquently of the Nazi holocaust, described his reactions after a visit to South Africa:

> What I understood in Soweto is that racial laws are wrong, not only because they result in collective and individual oppression, but also, and especially because they are laws. Racism itself is dreadful, but when it pretends to be legal, and therefore just, it becomes altogether repugnant. Without comparing apartheid and nazism and to its "final solution"—for that defies all comparison—one cannot but assign the two systems in their supposed legality to the same camp.

APARTHEID IS A CREATURE OF LAW

Apartheid is a creature of law in South Africa. It is a series of statutes enacted by the South African Government to impose a racial standard on every aspect of South African society. Where a person may work or live, what kind of education or health care they are entitled to, where they may travel or with whom they may associate—all subject to the arbitrary distinction of color. As a nation whose existence depends on the rule of law and which seeks to build respect for law worldwide, the United States can ill afford to remain silent in the face of a system which attempts to legalize injustice. As Abraham Lincoln said, "What is morally wrong cannot be made politically right."

It is a common misapprehension that in South Africa we are dealing with a vestige of the colonial period which has somehow survived into the 1980's. While there has been de facto segregation of blacks throughout this century, the legal system of apartheid has been built up incrementally since the coming to power of the National Party in 1948. Most of the major apartheid statutes were enacted in the 1950's and early 1960's. For those who argue for loyalty to our World War II ally as a reason for letting South Africa be, I would point out that the National Party wanted South Africa to remain neutral in World War II—that is neutral in favor of the Nazis—and had they been in power at the time, they would have been. Thanks to the bravery of Jon Christian Smuts, they weren't.

LEGAL FOUNDATIONS OF APARTHEID SIMILAR TO NAZISM

The parallels between the legal framework of South African apartheid and Nazi antisemitism in the 1930's are inescapable. What began in both cases as a political appeal to racist elements in the two societies, became the law of the land.

The Nazis came to power in Germany in 1932 on a platform of economic revival and decisive leadership. Soon after coming to power, they began an anti-Communist campaign. In 1933, a law was passed excluding non-Aryans from the civil service and requiring classification of citizens by race. Then a "National Press Law" excluded Jews from the press. Educational opportunity of Jews was then limited. Finally in 1935, Jews were declared noncitizens, forbidden to marry non-Jews, and denied protection of German law, under the "Reich Citizenship Law" and the "Law for the Protection of German Blood and German Honor."

The legal foundations of apartheid are strikingly similar. Laws entitled "The Prohibition of Mixed Marriages Act," the "Population Registration Act," and the "Suppression of Communism Act" were passed in 1951. Finally, the "Bantu Authorities Act" attempted to force blacks into tribalism and deny them political rights. And since that time the legal grip of apartheid has steadily tightened.

As it was built brick by brick, law by law, apartheid can be dismantled in the same way. The United States must do everything it can to encourage that process. Change will come in South Africa, one way or the other; as a matter of law or through violent conflict. Time is running out for a process of peaceful change. As Bishop Tutu, Allan Boesak, Beyers Naude, and others have warned, the cycle of violence may soon become uncontrollable. That's why we're here, not as a matter of philosophy or a political statement, but to avoid that final act of violence which invariably will draw the United States into it.

As leader of the black opposition in South Africa for decades, Nobel Prize winner Chief Albert Luthuli urged peaceful protest in order to win concessions. It did not happen. Leadership passed to Nelson Mandela, who advocated violence against inanimate objects, such as Government buildings, in order to win concessions. They have not been forthcoming and Mandela is in jail. What will be the methods advocated by tomorrow's leaders as they seek justice after years of increasing repression? We must act to support those who seek peaceful change and work to hold back the destruction of a race war in South Africa.

I remember very well, Mr. Chairman, people queried before we did our full research on the matter of the equivalency of these two sets of laws. They'd say, "Well, this really isn't the same comparison between Nazi Germany and South Africa." I would use as one of my examples—and I do here again today—I'd say, "Well, do you remember the movie 'Judgment at Nuremburg'?" "Sure. That was the trial of Nazi war criminals." I said, "Oh, really?" They'd say, "Well, sure, Goebbels, Himmler, Goering, and all the rest." I said, "No. it wasn't. It was a trial of the German judiciary which had legalized Hitler's policy of national socialism. That's what the trial was about." That's what you've got on the books in South Africa today. There is no difference insofar as legality. A body count? Of course, there's a difference. But as to making racism and repression of humanity legal, they are identical.

This isn't a disinvestment bill, I might add, that we are talking about. What we are trying to do is to use our position—it doesn't come from a disinterested party. This is the No. 1 trading partner of South Africa that is saying:

> If you do or if you continue on the course that you've set upon, then do so at your own peril and your own risk, not with either the moral or the dollar sanction of this Nation, the United States of America.

IMPACT OF ECONOMIC SANCTIONS

One last word about this business of economic sanctions and they never work. Let's just review that for 1 second.

Economic sanctions have been used and they are being used by the United States in many situations. We have trade embargoes against Cuba, Vietnam, and North Korea. We have outlawed U.S. importation of Libyan oil. Through the Jackson-Vanik amendment, we have made most-favored-nation status conditional on free emigration. One of the last times I was before this committee was to support an embargo against Uganda, and you had one of the prime movers in that, Senator Cranston. That passed the Senate and within months Idi Amin was gone. Again, we were their No. 1 trading partner. I believe the South African Government will only [illegible]st the sincerity of our opposition to apartheid when we back it with economic sanctions. To do less would call into question our [illegible]mitment to the ideals of equality and the rule of law and risk a [illegible] holocaust in Africa.

I came to Washington 16 years ago and everybody told me the situation would take care of itself. Well, it has. It's taken care of hundreds and thousands of blacks in South Africa who are no longer alive. You worry about the few that you saw shot in Uitenhage, you worry about the one out of every two children under 5 years of age that dies, one out of every two under 5 dies in the homelands of South Africa. We don't hear that here. They're too small to have their cry heard. No more.

I don't care, Mr. Chairman, what it is that you pass—obviously I do in terms of quality—as much as I care that the Senate of the United States, the Government of the United States, has something and take this out of the de facto let it resolve itself area and place us on record as a matter of law internationally in favor of the ideals of the Constitution of the United States, and that is why South Africa's problems and our problems are not the same, because we have a Constitution. Its ideals are in the stars. These laws are in the gutter.

Thank you.

[The complete prepared statement follows:]

TESTIMONY OF SENATOR LOWELL WEICKER

Mr. Chairman and members of the committee, I appreciate this opportunity to appear before you as you consider S. 635, the Anti-Apartheid Act of 1985, which Senator Kennedy and I introduced with several of our colleagues last month. This hearing today is an important step toward a United States policy with regard to South Africa which has us standing up for our ideals and protecting our basic interests in that part of the world.

I would like to use my brief time this morning to provide historical and factual background for the committee which establishes the context in which we should act. It is the opinion of this Senator that ignorance of the history of South Africa and misconceptions about it have prevented the American people from taking a firm and unequivocal stand against the system of apartheid, which relegates 23 million South African blacks to subhuman status.

In a recent OpEd piece in the New York Times, Elie Wiesel, who has written so powerfully and eloquently of the Nazi holocaust, described his reactions after a visit to South Africa. "What I understood in Soweto is that racial laws are wrong, not only because they result in collective and individual oppression, but also, and especially because they are laws. Racism itself is dreadful, but when it pretends to be legal, and therefore just, it becomes altogether repugnant. Without comparing apartheid and nazism and to its "Final Solution"—for that defies all comparison—one cannot but assign the two systems, in their supposed legality, to the same camp."

Apartheid is a creature of law in South Africa. It is a series of statutes enacted by the South African Government to impose a racial standard on every aspect of South African society. Where a person may work or live, what kind of education or health care they are entitled to, where they may travel or with whom they may associate—all subject to the arbitrary distinction of color. As a nation whose existence depends on the rule of law and which seeks to build respect for law worldwide, we can ill afford to remain silent in the face of a system which attempts to "legalize" injustice. As Abraham Lincoln said, "what is morally wrong cannot be made politically right."

It is a common misapprehension that in South Africa we are dealing with a vestige of the colonial period which has somehow survived into the 1980's. While there has been de facto segregation of blacks throughout this century, the legal system of apartheid has been built up incrementally since the coming to power of the National Party in 1948. Most of the major apartheid statutes were enacted in the fifties and the early sixties. For those who argue for loyalty to our World War II ally as a reason for letting South Africa be, I would point out that the National Party wanted South Africa to remain "neutral" in World War II (i.e. "neutral" in favor of the Nazis) and had they been in power at the time, they would have been.

The parallels between the legal framework of South African apartheid and Nazi antisemitism in the 1930's are inescapable. What began in both cases as a political appeal to racist elements in the two societies, eventually became the law of the land.

The Nazis came to power in Germany in 1932 on a platform of economic revival and decisive leadership. Soon after coming to power, they began an anti-Communist campaign. In 1933, a law was passed excluding "non-Aryans" from the civil service and requiring classification of citizens by race. Then a "National Press Law" excluded Jews from the press. Educational opportunity of Jews was then limited. Finally in 1934, Jews were declared non-citizens, forbidden to marry non-Jews, and denied protection of German law, under the Reich Citizenship Law and the Law for the Protection of German Blood and German Honor.

The legal foundations of apartheid are strikingly similar. Laws entitled the Prohibition of Mixed Marriages Act, the Population Registration Act, and the Suppression of Communism Act were passed in 1951. Finally the Bantu Authorities Act attempted to force blacks into tribalism and deny them political rights. And since that time the legal grip of apartheid has steadily tightened.

As it was built brick by brick, law by law, apartheid can be dismantled in the same way. The United States must do everything it can to encourage that process. Change will come in South Africa, one way or the other: as a matter of law or through violent conflict. Time is running out for a process of peaceful change. As Bishop Tutu, Allan Boesak, Beyers Naude and others have warned, the cycle of violence may soon become uncontrollable.

As leader of the black opposition in South Africa for decades, Nobel Prize winner Chief Albert Luthuli urged peaceful protest in order to win concessions. It did not happen. Leadership passed to Nelson Mandela, who advocated violence against inanimate objects, such as Government buildings property in order to win concessions. They have not been forthcoming. What will be the methods advocated by tomorrow's leaders as they seek justice after years of increasing repression? We must act to support those who seek peaceful change and work to hold back the destruction of a race war in South Africa. In such a war millions would die and the United States would suffer greatly.

I believe the measure before this committee provides the tools for encouraging a peaceful process. The strength of the bill which Senator Kennedy and I introduced is its conditionality: it provides incentives to the South African Government to institute reforms. The most damaging sanctions from the Government's point of view, the no new investment restriction and the kruggerand import ban, are subject to a waiver by the President and the Congress for 1 year if South Africa undertakes any one of the specified reforms in the bill.

This is not a "disinvestment" bill, in which the United States cuts and runs. It is a measure designed to maximize the leverage the United States enjoys because of its economic involvement in that country.

Finally a word about economic sanction as a matter of national policy. Economic sanctions have been used and are being used by the United States in many situations. We have trade embargos against Cuba, Vietnam, and North Korea. We have outlawed United States importation of Libyan oil. Through the Jackson-Vanik amendment we made most favored nation status conditional on free emigration. The last time I was before this committee was to support an embargo against Uganda, which passed the Senate and within months Idi Amin was gone. I believe the South African Government will only trust the sincerity of our opposition to apartheid when we back it up with economic sanctions. To do less would call into question our commitment to the ideals of equality and the rule of law and risk a new holocaust in Africa.

Pastor Martin Niemoller who lived in Germany during World War II wrote: "The Nazis came for the Communists and I didn't speak up because I was not a Communist. Then they came for the Jews and I did not speak up because I was not a Jew. Then they came for the trade unionists and I didn't speak up because I wasn't a trade unionist. Then they came for the Catholics and I was a Protestant, so I didn't speak up. Then they came for me. By that time there was no one left to speak up for anyone." It is time for us to speak up.

Senator HEINZ. Senator Weicker, thank you very much.

Senator Proxmire, I know you were detained by another engagement and appointment. Do you have an opening statement you would like to make?

Senator PROXMIRE. I have an opening statement, yes, indeed, but I'm not going to make it. It would be an anticlimax after these most compelling and persuasive presentations by Senators Kennedy and Weicker.

I do want to say something very briefly, however. I think we get the impression here because both Senator Kennedy and Senator Weicker are so eloquent and feel so passionately about this, that we are proposing radical legislation. We are not. I am a cosponsor of this bill and I think we ought to keep that in mind.

This is a bill, most of the provisions of which are identical to the bill that passed the House in October 1983 without objection and with a number of conservative Republicans standing up and pleading for it very eloquently. It does not require American companies to withdraw the billions of dollars they have invested in South Africa nor does it prohibit our firms from reinvesting profits they make there or cut off trade with South Africa.

It does prohibit new U.S. investment in and bank loans to South Africa. It also bans further importation of the South African gold coin, the krugerrand, which is a major source of foreign exchange for the white government.

It also bans further sales of computers to South Africa because they are used by that Government to help implement these police-state controls needed to enforce its unjust policies.

These economic sanctions are far less stringent than those our Government now has in place against the Soviet Union, against Vietnam, against Cuba, against North Korea, against Cambodia, against Libya, against Poland, and other human rights violators. They are modest. Some people might even say they're soft.

They will, however, send a strong signal to South Africa's white regime that unless its benighted racial policies are changed the country's economic isolation will worsen.

And I might just ask, Mr. Chairman, if the remainder of my statement—it's really a terrific statement—could be put in the record.

Senator HEINZ. On that representation, I'm sure there will be only modest objection, but we will do it anyway. Without objection, so ordered.

OPENING STATEMENT OF SENATOR PROXMIRE

Senator PROXMIRE. We begin today the first of what I hope will be a series of hearings on S. 635, the Anti-Apartheid Act of 1985. I am consponsoring that bill because I want our country to make very clear to the South African Government that its unjust and immoral policy of apartheid is unacceptable and must be changed if American corporations are to continue to play a growing role in that country's economy.

Exactly what is apartheid and why should it concern our country? Apartheid is the system in South Africa designed by the white community in 1948 to ensure their absolute rule over the black majority. The 4½ million whites maintain their rule over 21 million blacks by denying blacks the right to vote, denying them educational opportunities, denying them economic and social opportunities, and by requiring them to live in separate, segregated areas. In many instances black males are permitted to take jobs in urban areas but must leave their wives and children behind in rural homelands, while the males live in barracks-type all male housing. In effect, the whites have adopted a system of dehumanizing the black population in order to maintain their own privileged rule. The minority whites enforce their system through reliance on a harsh and repressive police rule backed up by the strongest military force on the African Continent. That force very possibly has a nuclear capability.

Why is it any business of the United States to try to change this abhorrent system in South Africa? First, our history, values, and institutions place Americans in basic sympathy with people seeking political freedom and civil liberties throughout the world. Such a policy is not only right but it helps strengthen our own national security by ensuring that our relations with other countries are not based solely on accommodating values of repressive regimens but rather on the enhancement of democratic values. American participation in both World War I and II was to help ensure the survival of such values in this world. After World War II our country, in framing and urging adoption of the U.N. Charter and the Declaration of Human Rights, formally committed itself to the advancement of political freedom and human rights beyond its shores. Secretary of State Shultz reemphasized this administration's continuing belief in this policy when he stated in a recent speech that:

> Throughout our own history we have always believed that freedom is the birthright of all peoples and that we could not be true to ourselves or our principles unless we stand for freedom and democracy, not only for ourselves but for others. And so, time and again in the last 200 years, we have lent our support—moral and otherwise—to those around the world struggling for freedom and independence.

Second, it is in America's national interest to promote peaceful change in South Africa. Presently political rights in that country are based solely on race and black people, no matter how accomplished they are they have none. Since blacks have no political rights, it makes it difficult for them to achieve a gradual, peaceful change in that country's race policies and Soviet preached violent change becomes an attractive alternative. President Kennedy once said "those who make peaceful change impossible make violent change inevitable." Violence would not benefit white or black South Africans or U.S. interests in Africa.

Over a quarter of a century ago, after the true nature of South Africa's ugly apartheid policy became clear, President Eisenhower denounced it and his administration voted in the U.N. for a resolution condemning that policy.

All American Presidents since President Eisenhower have spoken against South Africa's repugnant racial policies. Our Government has attempted time after time to encourage dialog between the races and changes that will result in government by the consent of the governed. Yet that regime has persisted in making its immoral system even more impervious to peaceful change despite cajoling by us and international condemnation by others.

Neither President Eisenhower nor any subsequent President has sought the cooperation of Congress in adopting measures that make clear to South Africa our abhorrence of its benighted policies. What could we do? We could bring strong economic pressures to bear on South Africa. After all, we are South Africa's biggest trading partner. Our exports to South Africa and our imports from South Africa exceed that of any other country and they are increasing. Also, with the exception of the United Kingdom, the

United States has the biggest investment in South Africa of any country in the world. That investment, too, is growing rapidly. In 1950 before President Eisenhower expressed his disapproval of South Africa apartheid, America's total investment in South African was only about $140 million. Today it is nearly 20 times as high. It is in excess of $2.3 billion. Loans by American banks to South Africa have risen rapidly in recent years and reached $4.5 billion in 1984. And almost $400 million of those loans are to the racist promulgators of apartheid itself, the South African Government. These actions, while taken in good faith, have strengthened the South African economy and the position of its ruling elite.

So what have we done about this apartheid system our Presidents have deplored as an affront to human dignity. We have increased our investment there by more than twentyfold. Our banks have used the deposits of U.S. citizens, to make huge loans to that racist Government. We have become South Africa's most important trading partner and our citizens last year imported 600 million dollars' worth of gold coins minted by that Government to help its foreign exchange earnings. These actions speak louder than any words of condemnation our Presidents may utter. Since this administration like others before it, will not act; it is time for Congress to take the lead and move beyond rhetoric in dealing with the white minority.

That is why I introduced my own bill S. 147 on January 3, the first day of this new session of Congress and joined Senators Kennedy and Weicker in sponsoring S. 635, the legislation before us today.

S. 635 is not a radical bill. It does not require American companies to withdraw the billions of dollars they have invested in South Africa. Nor does it prohibit our firms from reinvesting profits they make there or cut off trade with South Africa. It does prohibit new U.S. investment in and bank loans to South Africa and also bans further importation of the South African gold coin, the krugerrand, which is a major source of foreign exchange for the white Government. It also bans further sales of computers to South Africa because they are used by that Government to help implement the police-state controls needed to enforce its unjust policies. These economic sanctions are far less stringent than those our Government now has in place against the Soviet Union, Viet Nam, Cuba, North Korea, Cambodia, Libya, Poland, and other human rights violators. They will, however, send a strong signal to South Africa's white regime that unless its benighted racial policies are changed, the country's economic isolation will worsen.

Some will argue that such economic pressures will not work and it's best to work with the existing regime and persuade it by words to change its unjust policies. We heard these same "go slow and try and coax the whites to change" arguments prior to our own civil rights revolution. That revolution was won, however, only after laws were enacted making fair treatment of all our citizens compulsory. In the same way we, and other Western nations, have tried a moderate, coaxing effort with South Africa for over a quarter of a century. This administration in particular has totally emphasized friendship and winning the confidence of the white elite through a policy it calls constructive engagement—with no success.

Repression of blacks has gotten worse. S. 635 lets the South African Government know that change must begin. It does not require us to end all economic or trade relations but there is a clear, implied threat that further action can and will be taken if true reform does not begin. These moderate measures will strengthen the hand of those white South Africans who are arguing for change and there are many of them.

I also want to point out that S. 635 directs the President to undertake international negotiations to persuade other nations to adopt restrictions on new investment in and bank loans to South Africa. Sweden and Japan already restrict investment there, and a growing number of European legislators favor such restrictions.

S. 635 also provides that the President may, with Congress' assent waive its restrictions for periods of not more than 12 months if the South African Government takes certain specified steps to ameliorate its repressive rule. All restrictions in the proposed bill may be removed altogether if the President determines and Congress agrees that South Africa has abolished its apartheid system.

This legislation is the right thing to do and will serve our long-term national interest. I hope we can move it through the Congress this year and that the President will sign it into law.

Senator **Heinz**. And also, Senator Dixon has a statement to appear in the record and, without objection, it will so appear.

STATEMENT OF SENATOR DIXON

Senator **Dixon**. Mr. Chairman, I doubt there is any issue facing the Congress this year more important than the question of apartheid and how America should respond.

Apartheid is a repugnant concept. There is no justification or this institutionalized system of racial discrimination and subjugation. It is simply wrong—morally wrong.

Acknowledging the evil that apartheid represents, however, is not enough. What the committee has before it today is the question of what is the appropriate policy response from the United States. In short, what actions should we take to influence the South African Government to begin the process of dismantling this abhorrent system.

Currently pending before the Banking Committee is the subject of today's hearing, S.635. As I understand it, this bill would prohibit:

One, new U.S. bank loans to the Government of South Africa;

Two, new investment by American firms in the country;

Three, importation of the krugerrand; and

Four, U.S. firms from selling computers to the Government of South Africa.

I generally believe that the United States should minimize the use of trade as a foreign policy weapon. I have been particularly opposed to the quick-changing, on again off again trade policy that has been practiced in the executive branch for some years now.

South Africa, however, represents a very unique case and there has been considerable interest in Congress in legislatively changing our trade policy toward that country. There are a number of legislative options available, ranging from legislating the Sullivan principles to steps which would have the result of shrinking our trade with South Africa to a fraction of its current size.

This hearing is one of the first steps in determining whether and how our trade policies toward South Africa need to be modified. I want to congratulate the sponsors of S. 635 for bringing this matter before the Banking Committee. I look forward to the testimony to be presented this morning, and to working with my Senate colleagues in fashioning a bill that expresses our repugnance of apartheid and helps maximize the chances for early and peaceful change of that tragic, misguided policy.

Senator **HEINZ**. Senators Kennedy and Weicker, you have been extraordinarily eloquent in your presentations here today and I suspect what we are really doing is beginning a profound national debate about how this country changes its policy toward South Africa.

You have both identified from your experiences and your travels that which are perceived to be real shortcomings in constructive engagement. Indeed, the Senate itself went on record last fall by passing one of the provisions, among other provisions, in the legislation that you propose. The Senate passed without objection a bill containing the cutoff of all bank loans to the South African Government or any other government entity in South Africa. It's the first time to my knowledge that the Senate has ever so spoken.

There were other provisions in that legislation, including strengthening of the Sullivan principles, and other measures that the Senate adopted unanimously.

It is my view that action will be taken in this session of Congress on this issue. But having said that, because I don't want what I am about to say to be misinterpreted, we would be missing an opportunity—indeed, I fear abdicating our responsibility—if we didn't get to the heart of the very serious issue.

SANCTIONS ENDING APARTHEID WITHOUT VIOLENCE

I don't know how many of you saw an article that appeared in the Washington Post 2 or 3 weeks ago written by Hobart Rowan. He commented that both Bill Gray, author of the Gray amendment, the fortunes of which are part of the bill before us, and Chester Crocker really had a great deal in common. They really believed that a policy by the United States, whether it was constructive engagement or it was a more activist policy in terms of sanctions or sanctions that might be triggered, would indeed have an affirmative, positive impact on conditions in South Africa and on, therefore, presumably not only diminishing and ultimately ending apartheid but doing so without violence through peaceful change.

So my question, I suppose to either of you, but let me start with my good friend, Senator Kennedy, is to what extent do we have reason to believe that any action we take is going to bring about a positive, affirmative, peaceful change?

Senator **KENNEDY**. Well, first of all, Mr. Chairman, I think it's important to consider why we should take any action. One reason for taking action is to be consistent with our own value system and to have a foreign policy that reflects our own best values. I think that it is important that we be able to live with a policy that reflects our basic and fundamental values and beliefs. That isn't always the case, and all of us look at the past and find examples where that has not been the case. But certainly that's a fair objective, and that is not what's happening in the policy of constructive engagement, No. 1. So we should adopt a policy that is consistent with our values.

I very firmly believe, Mr. Chairman, that by taking this action it will be a very important signal, not just to the South African Government which is very important, but it will also be a very important signal to the 23 million blacks in South Africa. That signal should be that the United States is serious about its own value system and serious about its concern about their conditions. I think that's very important.

Last, let me get back to the point that I made earlier, and that is how serious the South African Government is. When I was in South Africa I had not intended to speak about divestiture. I went there to have an opportunity to talk to businessmen, to workers, to leaders in that country, as well as to talk to others.

Some in this room—Senator Proxmire, Senator Cranston, yourself, and others, Senator Weicker—have been involved with this issue for a long period of time—and to have the opportunity to exchange views with them.

Every day that I was in South Africa, on the front page of the paper there would be some reference, "We don't really care—the South African Government does not really care what the United States does on the issue of divestiture." I saw that the first day and I wondered why a statement was being made by a Government official the first day since I had made no reference to that and had no intention of doing so.

The second day was the same thing. The third day was the same thing. Every single day the papers carried headlines about disinvestment. And you can't come out of South Africa without the conclusion that it's just the opposite—they care very much about what we do. They protest too much.

And I think that many experts would say, "What happens in terms of the Congress of the United States, what happens in terms of the Executive, what happens in these local communities and universities has a very, very important impact on the South African Government."

FEAR OF DIVESTITURE

Senator Heinz. I have no doubt at all that the South African Government dislikes the notion of our even sitting here talking about any of these sanctions. I'm sure that they have an intense fear of being singled out for divestiture. We have never done that, to my knowledge, in this country. There may be some where we've done it.

But it seems to me that the fact that they don't like it, that they are afraid of it, is not quite the point.

What I really would like to try and get a sense of—and we are fortunate that you have so recently traveled there—is whether we should attempt to predict the kind of future our sanctions will achieve in South Africa. Will it cause the South African Government to be more repressive? Will it cause the South African Government to begin to end apartheid or shouldn't we care?

Senator **Weicker**. Can I respond to your initial question and also to your comment? As much as we are involved with 20 million blacks in South Africa, we are involved with an entire continent on this issue, indeed a black population throughout the world, and a black population that I might add is looking around and making its choices and making its decisions as to what roads it philosophically and politically wants to follow.

AFRICAN STUDENTS BEING EDUCATED IN CUBA

Several years ago on one of my visits to Cuba, I visited what is now called the Isle of Youth. It used to be the Isle of Pines. It has about 60 senior high school complexes on it; 15 of them are indigenous to the populations of countries other than Cuba. The one I visited had 600 students from Namibia getting their education courtesy of the Soviet Union in Cuba.

Now everybody talks about the Cuban troops in Ethiopia and Angola—don't worry about it; Africa will swallow them up as it swallowed up every other colonial power. But do you know what we ought to worry about—or rather, what our children ought to worry about? The 600 Namibians getting their education courtesy of the Soviet Union in Cuba, and going back to Namibia, and becoming the leaders of that nation, and setting its course for decades to come.

Now you say to yourself, "We don't have the institutions to teach in this Nation," we are the greatest of all in terms of its learning institutions. The final irony, do you know what their native language is? It sure as hell isn't Spanish. It's English.

So as we don't take advantage of the opportunity to stand up for what we believe in as a matter of our law, and our Constitution, and our ideals, so believe me, it also acts to our detriment when there are those that reach out and slap the hand away and go with the status quo for our own convenience, and we set the course of history for our children for decades to come.

So believe me, what we do here, whatever impact it has on that nation and those particular people, it has an even more far-reaching impact on how the United States is viewed among those who right now are in the process of choosing. If we take the action that's called for here or something akin to it, believe me, all the propaganda, and all the Radio Free Europe, and the U.S. Information Agency, and all the propaganda on our side, nothing can hold a candle to doing something right here. That's the United States manifesting its ideals in this troubled world. That's why it's important.

Senator **Heinz**. What do we expect to see in South Africa itself or shouldn't we care?

Senator **Weicker**. I'm sorry?

Senator **Heinz**. My question was directed at South Africa. What do either of you anticipate is going to be the result? I don't think anybody here wants a scenario, certainly one of many possible ones, where you have a vastly more repressive South African regime. Repression is met with more of the radicalization that Senator Kennedy referred to in his statement, and you get a bloodbath.

Senator **Weicker**. That's exactly why we are here. We don't want a bloodbath.

Senator **Kennedy**. Mr. Chairman, my statement makes very clear, and I believe very strongly and very deeply, that the future of South Africa is going to be decided by the South Africans. It's going to be decided by the South Africans.

We, as those who support and sponsor this proposal, don't suggest that we impose solutions to the problems in South Africa from the outside. We don't do that. Senator Weicker and I have said why we believe this is essential in terms of the United States' expression of a value system, but we acknowledge in our testimony that this problem is going to be decided by the South Africans. We understand that.

But we also believe that our ability to have some influence over that process, whatever that process, and whether it is going to be nonviolent, will be increased if we have some degree of credibility with some of the different forces there. And we do suggest that we are losing, if not already lost, credibility with the major player, with 90 percent of the population there, the black people of South Africa.

Senator **Weicker**. There are those that say that this type of action can only result in increased unemployment for blacks and they use it for saying that's why you've got to go slow because you're going to hurt the blacks. I would suspect when the Civil War was over and slavery in the South was eliminated there was increased unemployment.

Senator **Heinz**. I want to ask you, Senator Kennedy, something about a specific of your bill and then I will yield to Senator Hecht and Senator Proxmire for their questions.

What is the approach of S. 635 with regard to investment? I know it would prohibit new direct investment, but is it the premise of the bill that U.S. investment in South Africa is per se bad or are there conditions under which U.S. investment can have a positive effect toward eliminating apartheid?

Senator **Kennedy**. Well, it's self-evident what we are doing in terms of the new investment from the United States. It doesn't prohibit reinvestment by companies in that country of earnings taken in in that country. I suspect that those that support this legislation may have some differences on the questions of the divestiture issue. We stay clear of that in this legislation and try to target the Government of South Africa because it is the Government of South Africa that is perpetrating the policy of apartheid.

So we believe that this mechanism we are using—in terms of the bank loans to the Government and the krugerrands and the computers—is targeted on governmental activities. That was the premise on which we started this, and we welcome recommendations from members of the committee and from other Members of the Congress how that can be made most effective. These are not new concepts, but they are measured and they are intended to change the policies of the South African Government.

I'd be glad to give you my own views about the role of the impact of the Sullivan principles but that really is a different issue from what we are talking about here today.

Senator HEINZ. My time has expired. Senator Hecht.

Senator HECHT. Senator Kennedy, in December my wife and I also went to South Africa. We spent 20 days down there and certainly no way in 20 days can one have any expertise, so rather than form my own conclusions I talked to a lot of people in South Africa. The Jewish issue has been raised by you and by Senator Weicker and in the same context as Nazi Germany. I don't buy that concept at all.

I spent a tremendous amount of time with Jewish people in South Africa. In Capetown I went to the orthodox synagogue because I am orthodox. I spent a lot of time with a reformed rabbi in South Africa. I met with Jewish business people.

"BRING MORE AMERICAN INVESTMENT"

The one story which they said to take back if you want to help the blacks in South Africa, "Bring more American investment, not less American investment." It was only when America went down to South Africa and started investing that the blacks then began to get equal pay for equal work and better economic conditions. There was a reformed rabbi who's been in Capetown for 37 years and I spent a lot of time with him and no one has been more dedicated to social change than he has been. This was the message he sent back. He said, "This is the way you can help the people of South Africa," and he said, "I have seen changes in the last 5 years that I never expected my grandchildren to see." He said, "Bring more American investment down here."

You know, in South Africa the working conditions are such that—they're not the greatest and in no way do I condone the policies, but I do believe in evolutionary changes. But one man working in South Africa sometimes goes back to his homeland and feeds 15 to 20 mouths. Senator Kennedy, also my wife and I spent time in Zimbabwe, formerly Rhodesia. We have seen what has happened when a government has crumbled and only because of the South African Government is Zimbabwe somewhat of a friend of South Africa and has not gone altogether Communist.

I don't want to go on and on because time is very short, but I asked this rabbi in South Africa, "Why is it that many people of the Jewish faith in America and others are getting up in arms on this?" He looked at me and he's a great scholar and he will never criticize anyone, but he said, "Perhaps they are not as informed as they should be." And I say, "Let's listen to the people. Let's not have these economic sanctions." I am worried that the Government would fall and an unfriendly government would come in. Vietnam is still in my memory. The Shah of Iran when we went against him is still in my memory. Let's go along with the people of South Africa and they are trying to make changes and let's not have economic sanctions.

Thank you, Mr. Chairman.

Senator HEINZ. Senator Hecht, thank you very much.

Senator Proxmire.

Senator **Kennedy**. May I just make a brief comment on that?

Senator **Heinz**. By all means.

Senator **Kennedy**. First of all, I have respect for your view and for your opinion. Obviously you spent a good deal of time in South Africa and you talked to many of those who have been working long and hard to try and relieve a good deal of the injustice which exists there.

I draw the same conclusion about apartheid as I do about the holocaust of nazism, and if I'm wrong, Senator, correct me. When you were born a Jew in Germany you went to the gas chamber. When you're born black in South Africa, you go to the homelands. It's the color of your skin that determines your fate from the moment you're born.

Now I find that to be an objectionable policy and it is intolerable for the United States in any form or shape to compromise with or to support that policy.

Senator **Hecht**. Well, I think that in South Africa——

Senator **Kennedy**. That's the comparison I make. Others may draw different conclusions, but that to me was the appropriate comparison.

I would just say finally, that the positions that have been expressed here are not just those of Senator Weicker and myself, but are also those of Bishop Tutu, Nobel Laureate, of Rev. Allan Boesak, a distinguished leader of the church, and of Rev. Beyers Naude who was a member of the Broederband, the ultimate white preserve in South Africa. Reverend Naude is also a distinguished church leader who had an excellent article in the New York Times last week in which he reached these same conclusions.

So I would hope that our comments and testimony would be considered as being more than just a reflection of our own views but also as reflecting those who live there and who face this problem every day. I don't take anything away from those in South Africa who have been trying to work—and to work very effectively—to reduce the injustices. They are enormously courageous, and they have done an extraordinary job.

Senator **Hecht**. Well, I did not meet with heads of state. I met with working people, business people, and blacks who have elevated themselves in South Africa and your position and my position is absolutely at an opposite end. I think that by going on with American investment we will do more to help the black people than hinder them and to say they are not elevating themselves—I think the Government of South Africa will make these changes that we want. They have brought the colored into the Parliament, the Indians, and I think it's just a very short time before the black people are. Everyone down there I spoke to wants to do that. There's been tremendous evolutionary change down there. Let's work with them. To say a black man in South Africa has no opportunities, that's entirely different, and if you would want to equate the Jewish situation here, I wish the Jews inside Soviet Russia would have the same religious opportunities that the blacks in South Africa have.

Senator **Heinz**. Senator, thank you. Senator Proxmire.

Senator **Proxmire**. Thank you very much, Mr. Chairman.

I want to once again commend our two witnesses. I'm very, very deeply impressed and moved by what you gentlemen have told us and I think the overwhelming fact that we can't get away from is that for 27 years, ever since President Eisenhower spoke out on this in 1957, our Presidents have been speaking out and deploring apartheid and there's been no basic change in that policy in South Africa.

The fact is that the blacks in South Africa still cannot vote. They cannot live where they want to live. They can't get the job they should have. They can't get the education they should have. It's not a gas chamber, but it's a living death, and I just cannot understand how we can simply say, "Well, we'll continue to go along with the same thing we have done in the past and somehow we'll get an evolution." We haven't got an evolution. We have had that response given to us again and again to satisfy our doing nothing.

I just have two very quick technical questions, one for Senator Kennedy and one for Senator Weicker.

Senator Kennedy, the bill that you have introduced and I'm cosponsoring has a provision banning future imports of the South African gold coin, the krugerrand. That provision does not make it illegal for Americans to hold their existing krugerrands nor does it prevent Americans from acquiring other gold coins such as the Canadian maple leaf or the Mexican Aztec or, if Senator Cranston has his way, the Cranston bald eagle. [Laughter.]

Will you comment on why you want to block future imports of the krugerrand?

BLOCK FUTURE IMPORTS OF THE KRUGERRAND

Senator **Kennedy**. Senator, this legislation only deals with new imports of the krugerrand into the United States. It would have no effect on the current ownership or the disposal of krugerrands already owned by people here in the United States. Nor would this legislation affect the purchase of gold coins from Canada or Mexico, or Senator Cranston's proposal for developing a gold medallion in this country.

Senator **Proxmire**. Isn't it true that while there are some imports from South Africa that are very important to us that have military implications—there are minerals that we have to have—that the krugerrand is something that has absolutely no import for our national security or for any other significant economic purpose? It's simply a coin that people can hold and, as you say, they can hold what they've got now. In fact, krugerrands already in this country will probably go up in value.

Senator **Kennedy**. The Senator is quite correct.

Senator **Proxmire**. Senator Weicker, this bill also bans sales of computers to the South African Government. Why do we single out computers?

Senator **Weicker**. When you're keeping track of 23 million blacks, don't do it manually. Obviously, that particular instrumentality is key to the entire system. That's the answer.

If I might, I want to say two things. First of all, everybody ought to know that Senator Proxmire has been on the point on this issue for the last couple years, not only now when the issue is hot, and as Senator Kennedy pointed out, much of what's in this bill is what he's set before us for the last several years. And I think he should be given credit for it.

Senator Hecht, I can only make one point as far as a similarity in law between Nazi Germany and South Africa.

In Nazi Germany, you wore a yellow Star of David. You wore it and maybe you had chalked on you, "Juden." In South Africa, you carry your papers just as that Jew in Germany carried his papers, a noncitizen within his own country, and so is the South African black a noncitizen within his own country with his passport and his papers.

Now, yes, you're right, in the 1930's we were making our investments in Germany and what a price we paid for it. And we are here to make sure that a similar price is not paid in this decade.

Senator **KENNEDY**. Mr. Chairman, if I could——

Senator **HECHT**. Senator Weicker, we just do not agree, but I want you to know that no one is more mindful of the atrocities in Germany than I am. My mother was an emigrant and but for the grace of God, she fled and arrived in America. If it wasn't for the grace of God I wouldn't be here today. So I am very mindful of that.

Senator **KENNEDY**. Mr. Chairman, if I could just put in the record a statement given to me by the president of the Council of Unions in South Africa at our meeting in South Africa last January.

Senator **HEINZ**. Without objection.

[The following information was subsequently submitted for the record:]

INTRODUCTORY REMARKS BY MR. JAMES MNDAWENI, PRESIDENT OF THE COUNCIL OF UNIONS OF SOUTH AFRICA AT THE MEETING WITH SENATOR KENNEDY

In agreeing to meet with you we experience certain pressures and see clearly certain opportunities to advance the cause of liberation in our country, of the working class.

It is our firm belief that in meeting with you today we wish to put the point of view of our federation concerning: 1. Our aspirations; and 2. our expectations of your visit.

Our aspiration is to ensure that all the people in our country have the political right to vote and determine their future. We wish to enjoy the franchise in an undivided nonracial country free from race or ethnic discrimination. We desire that all the instruments of apartheid—legislative, racial and otherwise—be destroyed. We see the elimination of apartheid. Not the amelioration of apartheid. We therefore expect that influx control be eliminated; that the migrant labour system be phased out. We want immediate equal education and training and university entrance based on merit and not quotas. We seek an end to race classification and the prohibition of mixed marriages. We seek an end to the Group Areas Act and the end to race ghettoes. Nor do we see room in such a society for the undemocratic security legislation which exists presently. We want the withdrawal of the army from our townships and an end to the homeland system.

We desire that this transition be brought about as quickly as possible as painlessly as possible, without violence and loss of life of our brothers and sisters.

We know as a reality that this transition cannot be achieved unless and until all those organizations representing the political aspirations of the people are able to communicate their desires and aims, within the country in a free and open way. Our expectations of your visit are quite clear as well. We wish you to see and hear for yourself the plight of the black majority of South Africa. But more than that we expect that you will commit yourself to our aspirations and go back to your country and work unwaveringly for the cause of a free South Africa.

We meet with you as both an owner of capital and a legislator in the United States Federal Government.

We request therefore that you use your personal capital to divest from companies which:

Do not adhere to just and equitable labour practice.

Do not endorse that all South Africans should enjoy all the freedoms that United States investors enjoy.

Do not commit themselves to working towards a just and free and undivided South Africa.

We expect also that on your return to the United States you will press immediately and urgently, and achieve before the end of this year Federal legislation which will clearly:

Stop new investment in South Africa, whilst apartheid still exists in South Africa;
Restrict the sale of krugerrands;
Withdraw all investment which supports the apartheid system, and
Terminate U.S. involvement in so called homelands;
Cease all supplies of whatever nature which assist the apartheid machinery.

We expect also that you will pursue a vigorous campaign of constructive disengagement and ensure that nuclear, computer and defence technology is not sold, or licensed or franchised in South Africa.

Now, 18 years ago when Robert Kennedy visited South Africa hopes were born. In that memory we urge you to press for political, economic and social justice not only amongst the citizens of the United States not only for the deprived and the dispossessed in South Africa, but for all humankind wherever there is suffering and oppression.

We call for an end to United States imperialism in South America, in Asia, in the Middle East, in Africa.

We urge that you accept the Third World and its people, whatever their political persuasion as equals and work toward world peace.

Senator KENNEDY. I had a meeting with the CUSA leadership at that time and this memorandum, which their President gave to me, indicates their position on matters which are very closely related to the legislation.

THE SULLIVAN PRINCIPLES

Senator HEINZ. Senator, I have one last question for you and it has to do with the fact that S. 635 omitted a provision that passed both the House and the Senate last year, and that was on the so-called strengthening of the Sullivan principles.

Is that omitted because the authors object to that or is it omitted for other reasons?

Senator KENNEDY. As I mentioned, Mr. Chairman, it was the decision of the sponsors, both in the Senate and also in the House, to target this legislation on the policies of the South African Government as much as possible. The Sullivan principles relate to the performance of U.S. corporations that are operating in South Africa and only affect Government policies indirectly. I have views on the enhanced Sullivan principles, but—I'm just speaking personally on this—I think it would be unwise to confuse these two issues. There will clearly be opportunities for debate about the effect of the Sullivan principles on apartheid.

Senator HEINZ. I'm a little confused by the application of that principle. If I understand you correctly, what you're saying is the Sullivan principles aren't here because they deal with American companies and you want to focus on the South African Government. Yet we do have a provision of S. 635 that deals with investment by American companies in American companies. To me, that seems inconsistent with what you said your purpose was, which is only to affect the South African Government, but maybe I don't understand. Can you explain that?

Senator KENNEDY. Well, this legislation is also intended to distance the United States from the apartheid system, to call a halt to any additional U.S. complicity in that system, to prevent any more funding or financing or support of apartheid by U.S. persons in the future. This is in addition to our focus, on the Government of South Africa and our efforts to influence its policies.

Senator HEINZ. You don't have an objection in principle to strengthening the Sullivan principles?

Senator KENNEDY. No, I don't. There have been four different changes in the Sullivan principles over the years. The most recent one, which was the fourth amplification of the Sullivan principles, was put forward by Reverend Sullivan last November. I believe that this is the absolute minimum that U.S. companies must do to continue in South Africa. That's my view.

Senator HEINZ. Thank you very much, both of you. You have been very helpful and I commend you both on your legislation and you have initiated a major national debate.

Senator DODD. Mr. Chairman.

Senator HEINZ. Excuse me. Senator Dodd.

Senator DODD. Not at all, Mr. Chairman. I know you have a hard time seeing to your left. [Laughter.]

Senator HEINZ. I'm glad to see you glance right once in a while.

Senator DODD. I have no choice but to do that.

First of all, let me just commend our two colleagues. I've often said to my good friend from Connecticut, my Senator, that I'm proud of my Senator, he's done so much on several other issues as he's done on this one, as well as the historic response of Senator Kennedy on this issue and others.

Let me just raise one point to the two of you that I've been thinking about during this discussion. By the way, we've had consideration of your proposal in the Foreign Relations Committee. Senator Cranston proposed something similar, if not identical, to what you're suggesting. We're going to have some additional hearings on that in the Foreign Relations Committee.

It occurred to me—and Senator Kennedy, maybe you would like to respond as well as Senator Weicker—in the civil rights movement in this country many have suggested that there were many whites in the South as well as many blacks who understood what should be done during the terrible times leading up to the Supreme Court decisions and acts of legislation by this Congress, but that for white politicians in the South to propose the things that they knew had to be done would have been lethal to them politically. In the privacy of discussions they would admit what was wrong and what should be done. Many black leaders knew as well that there were certain compromises that probably had to be made but for them to say it out in public would have been detrimental to their position as well.

Ultimately, the only way we were able to achieve the successes we were came about as a result of outside pressures from the Supreme Court of this country and from the Congress of the United States. That made it possible then for responsible elements to take affirmative action to begin to address some of the problems.

It occurred to me that in South Africa we are dealing with much the same kind of question, that there are responsible white leaders in that country who don't take any solace at all in continuing the policies that deprive the majority of that country from participating fully in their own Government, and obviously many black leaders as well understand this is not going to be something that happens overnight but we must begin that constructive process.

The issue of outside interference is one that we are confronted with all the time.

Do you think that comparison is legitimate, the one of our civil rights movement in our own country, and the ultimate effect of the outside influence in what we have seen at least achieved up to now?

Senator **KENNEDY**. Senator, it is certainly my view, but my view is less important than that of those who are experiencing the real whip and lash of apartheid in South Africa. Those who are the moral leaders, the outstanding church leaders of South Africa, whether Tutu, or Boesak, or Beyers Naude, or Hurley, view the condition very much the way you expressed it, Senator. The actual influence of the United States far exceeds the few hundred million dollars that is at issue in this legislation. The U.S. position as a moral leader in the world and our willingness to take this kind of action will have an extremely important impact—not only in assuring blacks and whites in that country that we are true to our own values and principles, but also that we want to contribute to a peaceful and constructive resolution of the differences which exist in that extraordinary country. I think you have expressed it well, and I think outstanding, thoughtful men and women in South Africa are very hopeful that with outside pressure, the differences that exist in that society can be worked out in a constructive and positive way.

Senator **DODD**. Thank you.

Mr. Chairman, thank you very much and thanks to both of you.

Senator **HEINZ**. Are there any other questions?

[No response.]

Senator **HEINZ**. If not, Senator Mattingly has some questions he wants to submit to you for the record. Without objection.

[Response to written questions of Senator Mattingly follow:]

RESPONSE TO WRITTEN QUESTIONS OF SENATOR MATTINGLY FROM SENATORS KENNEDY AND WEICKER

Question 1. Mr. Mangosutho Buthelezi, the heredity leader of South Africa's Zulu people has been quoted as saying that "* * * If we are to avoid a destructive conflagration in South Africa, the process of change in the country must be speeded up." The quote continues, "I fail to see how those who agree with this statement can possibly talk of our effective economic isolation. Isolation will bring stagnation to the economy and perhaps even destroy its growth base. Yet it is in the circumstances of a rapidly expanding economy, where the interdependence of black and white is vastly increased, that the propensity of the country to change is enhanced. Black vertical mobility is a concomitant of economic growth." Do you have any comments on this position?

Answer. The modest sanctions that we have proposed will not result in "effective economic isolation" of South Africa nor will they "bring stagnation to the economy" or "destroy its growth base." These measures are carefully designed to send a strong and visible signal to the people of South Africa that the United States will use whatever influence it has at its disposal to assist in the effort to dismantle apartheid. This legislation is intended to make clear the American people's revulsion with apartheid and to put pressure on the South African Government to undertake meaningful reform.

We do not accept the theory that South Africa can grow its way out of apartheid, that economic expansion will necessarily be accompanied by political reform. The substantial growth of the South African economy over the past 20 years has been accompanied by an increase in the strictures of apartheid, and according to the Carnegie Commission's Second Study on Poverty in South Africa, this economic expansion has been accompanied by an increase in poverty for most black people.

We believe that sweeping changes must be made in the legal structure that supports apartheid if a conflagration is to be avoided, and we believe that only a combination of external and internal pressure on the South African Government will produce meaningful change in that structure. To that end, the United States should use its diplomatic and economic influence to encourage such change.

Question 2. Your legislation essentially proposes capital controls for the purpose of achieving certain, specific political and moral goals. Would you support an extension of this concept to those other nations around the globe whose internal policies are repugnant to American concepts of individual freedom and democratic institutions?

Answer. Economic pressure is a common feature of U.S. policy today. Sanctions against Cuba, Uganda, North Korea, Vietnam, Poland, and the Soviet Union have been approved by Congress in the past and have been implemented by past administrations, Republican and Democratic alike. The goal of these efforts has been to tailor economic pressures to the specific situation at hand. This is what we have attempted here.

We believe that economic sanctions should be evaluated on a case-by-case basis, that the United States must examine the circumstance of each case before determining whether such measures are appropriate.

Question 3. How would we prevent South Africa from obtaining bank loans and investment funds from other countries and how would we prevent third party nations from increasing their borrowing from the U.S. for the purpose of lending the capital to South Africa?

Answer. Our legislation encourages the President to seek international cooperation and participation in adopting similar measures against the government of South Africa. Only through such international cooperation can "third party" lending and borrowing be controlled. We are hopeful that with leadership by the United States and with a clear example by our government and as a result of urging from our representatives, our friends and allies will follow suit.

Senator **Heinz**. We want to thank both of you for your time. It's been a very lengthy discussion but I think it's been very worthwhile and we commend you both.

Senator **Weicker**. What time today, Mr. Chairman, is markup? [Laughter.]

Senator **Heinz**. Our next witness is Deputy Secretary of State, Ken Dam, accompanied by Chester Crocker, who is Assistant Secretary for African Affairs.

Gentlemen, welcome. We're glad you're here. Please proceed.

STATEMENT OF KENNETH DAM, DEPUTY SECRETARY OF STATE, DEPARTMENT OF STATE, ACCOMPANIED BY CHESTER A. CROCKER, ASSISTANT SECRETARY FOR AFRICAN AFFAIRS; AND FRANK WISNER, DEPUTY ASSISTANT SECRETARY FOR AFRICAN AFFAIRS, DEPARTMENT OF STATE

Mr. **Dam**. Thank you, Mr. Chairman.

Mr. Chairman, thank you for the opportunity to speak today on U.S. policy toward South Africa.

I believe that all Americans find repugnant the system of racial discrimination called apartheid that is practiced there. We are united in our belief that apartheid is morally abhorrent, politically unsustainable and economically wasteful. But moral indignation, no matter how natural and justifiable, is not a substitute for an effective foreign policy—certainly not for an activist world power that seeks change in a manner that will benefit all South Africans.

The issue, then, is what we as a nation can do to promote positive and nonviolent change toward a more just order—an order that recognizes fundamental human rights and political liberties in South Africa.

SANCTIONS WOULD BE COUNTERPRODUCTIVE

It is the position of this administration that sanctions, such as those in the legislation before you today, would be counterproductive: They are more likely to strengthen resistance to change than to strengthen the forces of reform. Moreover, they do not even put us, as some say, "on the side of right." If our moral imperative as Americans is to encourage freedom and reform, we must reject sanctions: We do not enhance our ability to influence change by eliminating ourselves as an actor.

Mr. Chairman, I should like to briefly review the situation in South Africa, the extent of U.S. influence there and the current United States-South African relationship, which is based on anything but business as usual. Then, I should like to briefly analyze some of the principal sanctions that have been proposed in S. 635—and other legislation as well.

The policy of this administration has been to foment change away from apartheid:

By unambiguous public statements condemning apartheid's evils;

By reinforcing these views with quiet diplomacy;

By working with elements within South Africa that share a vision of peace and equity;

By encouraging laudable fair employment practices of U.S. companies, and

By involving ourselves as a government in financing programs—some $30 million in 3 years—to give South African blacks better training and educational opportunities.

In part because of U.S. encouragement, change in South Africa has begun—barely, but it has begun. More progress toward justice in that society has been made in the last few years than in the preceding three decades. The concept that South Africa's blacks have no citizenship rights outside the tribal homelands has been abandoned and blacks today have certain urban residency rights in areas that were unavailable a few years ago. Black trade unions have become a powerful force in industry. The Government has suspended the forced removal of settled black communities. It has just announced that it will support repeal of two of the more odious aspects of apartheid, the Mixed Marriages Act and that portion of the Immorality Act which proscribes sexual relations between the races. Central business districts are being opened to black businessmen. Cities throughout South Africa have abolished the trappings of petty apartheid such as segregated parks and swimming pools. The Government has acknowledged the need to consult and negotiate with representative blacks outside the tribal homelands.

Tragically, of course, much remains to be done. South Africa still cannot be considered a just society whose system derives its authority from the consent of the governed. Black leaders continue to be detained without trial or charged with treason. Violence has increased in recent months with tragic results. The Government has yet to repeal the hated pass laws or to devise mutually acceptable mechanisms for negotiations with black leaders.

We must use our influence to promote further peaceful change but we must not overestimate the degree of our influence. South Africa has traditionally pursued a course it believes to be in its own best interest and has been open only to those who bear what it believes is a constructive message based on an intelligent appraisal of the complex realities it faces. In addition, South Africa looks to us as perhaps the only non-African nation capable of playing a constructive role with all the nations of southern Africa in the search for regional peace.

We must not overlook this regional aspect in assessing the South African issue. The region has seen almost continuous conflict with armed clashes taking place in South Africa, Zimbabwe, Mozambique, Namibia, Lesotho, and Angola. Guerrilla attacks launched against South Africa from neighboring black states have provoked cross-border retaliation by South Africa. One of the primary goals of our policy has been to reduce this violence between neighbors, and in this we believe we have had some success.

It is important to recognize that our influence with South Africa does not derive from a client relationship. In fact, our military, political, and economic relations with South Africa are by design far less intimate than with many other states of similar political and economic importance. Indeed, significant restrictions are already in place that circumscribe our trade and cooperation in the military and nuclear areas, and impose a political stance that results in our clearly dissociating ourselves from apartheid.

For example, in an effort to eliminate apartheid, U.S. arms sales to South Africa have been embargoed since 1963, and in 1977 the United States joined the United Nations in imposing a further mandatory arms embargo on South Africa. Our regulations are in fact more severe than the U.N. embargo and restrict U.S. exports to the South African military and police of items not covered in the U.N. embargo. In December of last year the United States joined with other U.N. Security Council members in voting for an embargo on imports of arms and ammunition produced in South Africa.

Our commercial relationship is now also restricted. Eximbank is essentially prohibited from financing U.S. sales to South Africa except under very restrictive circumstances. OPIC does not provide guarantees for South Africa. Our representative at the IMF must "actively oppose any facility involving use of fund credit by any country which practices apartheid" unless the Secretary of Treasury makes certain certifications to Congress. U.S. trade fairs do not travel to South Africa. We carefully review export license applications for the export of, among other things, U.S. crime control equipment to prevent the use of such items in the enforcement of apartheid.

This, then, is the reality of our relationship: limitations on a vast portion of our military and commercial transactions. To argue, as some do, that our relationship is based on business as usual—or that our Government has a normal relationship with South Africa—is patent nonsense.

PROHIBITION ON BANK LOANS WOULD CREATE A DANGEROUS PRECEDENT

Some argue that we should go further and try to run South Africa out of the community of nations through boycotts, embargoes, and sanctions. The legislation before you, for example, would prohibit bank loans to the South African Government or its parastatal corporations. We fail to see how this would hasten the end of the apartheid system. Indeed, it would hurt U.S. and allied business more than it would help reform in South Africa.

A prohibition on bank loans would create a dangerous precedent undermining the U.S. policy that international capital markets should remain free of government interference and that lending decisions should be based on market rather than pol tical considerations. If bank loans to South Africa should be prohibited, then South Africa would be the only country with which the United States has diplomatic relations that would be subject to a U.S. bank loan prohibition; this is an important precedent for the Banking Committee to bear in mind.

The result of such a prohibition on bank loans would be that parastatal agencies far removed from the development of apartheid policy, such as the Electricity Supply Commission or South African Airways, would be unable to get U.S. financing for the purchase of American products. This would penalize U.S. banks and firms doing significant business with these entities, without any real impact on South Africa. Almost certainly other countries' banks would replace U.S. banks as a lending source and their factories would benefit from the orders that would have gone to U.S. firms.

In addition, any extension of an effective loan prohibition to cover foreign affiliates or branches of U.S. banks would raise serious questions about the extraterritorial application of U.S. law. The result would be strong objections from our allies who would consider their sovereignty violated.

The administration also opposes the adoption of a prohibition on new investment in South Africa. Our opposition is based on three points. First, such a prohibition would limit opportunities for expansion by precisely those firms that have done the most to promote social change in South Africa. It would thus freeze the number of black employees benefiting from the Sullivan code and similar codes of corporate conduct. Such a freeze would in turn slow the process of change inside South Africa in which the more progressive U.S. firms have been in the forefront.

Second, this measure would discriminate against U.S. firms that might desire to invest in South Africa, by offering in effect an oligopolistic situation for firms already there. To the extent that the absence of U.S. investment might create market opportunities in South Africa, there is little doubt that some of our economic competitors around the world would step in to fill such a gap.

NEW JOB OPPORTUNITIES DENIED

Third, and most important, as a direct consequence of a prohibition on new investment, black South Africans would lose new job opportunities or be denied opportunities to be employed by the more progressive U.S. firms. An economy that must create 250,000 new jobs for young blacks each year, and that will have twice as many of them entering the job market by the turn of the century, needs more jobs, not less.

In addition to a prohibition on bank loans, another proposal would also require that U.S. firms in South Africa be made to comply with mandatory labor standards. This proposal would mandate the adoption by U.S. firms in South Africa of employment standards such as those contained in the Sullivan principles, which are voluntary in nature. In our view, it has been precisely the voluntary nature of these principles that has resulted in their successful application to date by U.S. firms operating in South Africa. While less than a majority of the U.S. firms in South Africa have actually adopted the Sullivan principles, the largest U.S. firms have done so, with the result that more than 70 percent of the nonwhite employees of U.S. firms in South Africa are covered by these principles. Through continued persuasion, we believe more firms will joint this effort.

Requiring companies to adopt labor standards and threatening prosecution for failure to do so is likely to undercut the positive achievements of the U.S. Sullivan signatory firms. The voluntary nature of the Sullivan code has served to set an example for European and South African firms to break with the old, racist ways of doing business. The U.S. companies, through Sullivan, proved that individual efforts could help move the system in a positive direction. These firms have spent over $100 million outside the workplace to aid their employees and others in the black community. In addition, given the delicate business climate faced by firms that invest in South Africa, making labor standards mandatory could prove to be the final straw in causing some U.S. firms to reconsider their presence in South Africa. Their withdrawal would mean that fewer, rather than greater, numbers of black South Africans would come to enjoy the benefits of working for firms that adhere to enlightened labor standards.

These fair labor standards were originally developed to be a voluntary guide for firms, not a legal code. Some of the measures under consideration, however, would require the U.S. Government to make highly complex legal judgments, based on vague and imprecise standards, on each U.S. firm and impose severe penalties on firms that are not certified as being in compliance. This would not only be unfair to the firms involved, but would be unworkable as well.

Finally, other bills before you would impose a blanket prohibition on the export of nuclear equipment and technology. Such a prohibition would undermine our ability and leverage to broaden the application of international safeguards in countries that do not presently accept full-scope safeguards. Such a blanket prohibition on the export of all dual-use goods and nuclear equipment or technology to South Africa, as well as all other nonfull scope safeguard states, would undercut our nonproliferation efforts and would reduce our influence in such countries' nuclear programs.

All applications for exports of nuclear-related equipment or assistance are already thoroughly reviewed as to their proliferation implications and their effect on foreign policy. In the case of states that have not accepted full-scope safeguards, only limited nonsensitive assistance is permitted—and then only when it will advance our nonproliferation objectives. In the case of South Africa, our dialog with that Government on nonproliferation matters, coupled with a willingness to allow extremely limited, nonsensitive assistance to facilities in South Africa that are under IAEA safeguards, contributed to three important decisions by the South African Government last year: first, to require IAEA safeguards on all its nuclear exports; second, to export only according to the nuclear suppliers group guidelines; and third, to renew talks with the IAEA concerning placement of its semicommercial uranium enrichment plant under IAEA safeguards.

In sum, Mr. Chairman, this administration does not believe that any of the punitive measures in the bill before you, or similar ones in other bills that have been proposed, will hasten the demise of apartheid. We do not believe it is wise to withdraw the limited tools of influence we do have and simply hope the problem goes away. To impose sanctions might express our grief and anger over the violence that has recently taken the lives of so many in the Eastern Cape and elsewhere in South Africa. Such action would not, however, ameliorate the burdens of the victims of apartheid. Indeed, the likely result would be to increase those burdens and squander our influence, thus making the United States essentially irrelevant to the process of change in South Africa.

In short, it is difficult to see how South Africa will be a better place without United States influence and presence there, limited though they are. If what we seek is to influence positive change within South Africa and to encourage regional stability—including the establishment of an independent and internationally recognized Namibia—then sanctions must be rejected.

[The complete prepared statement follows:]

TESTIMONY OF DEPUTY SECRETARY OF STATE
KENNETH W. DAM

BEFORE THE

SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

April 16, 1985

Mr. Chairman, thank you for the opportunity to speak to you today on U.S. policy towards South Africa.

I believe that all Americans find repugnant the system of racial discrimination called apartheid that is practiced there. We are united in our belief that apartheid is morally abhorrent, politically unsustainable and economically wasteful. But moral indignation, no matter how natural and justifiable, is not a substitute for an effective foreign policy -- certainly not for an activist world power that seeks change in a manner that will benefit all South Africans.

The issue, then, is what we as a nation can do to promote positive and non-violent change toward a more just order -- an order that recognizes fundamental human rights and political liberties in South Africa.

It is the position of this Administration that sanctions, such as those in the legislation before you today, would be counter-productive: they are more likely to strengthen resistance to change than to strengthen the forces of reform. Moreover, they do not even put us, as some say, "on the side of right." If our moral imperative as Americans is to encourage freedom and reform, we must reject sanctions: we do not enhance our ability to influence change by eliminating ourselves as an actor.

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Tragically, of course, much remains to be done. South Africa still cannot be considered a just society whose system derives its authority from the consent of the governed. Black leaders continue to be detained without trial or charged with treason. Violence has increased in recent months with tragic results. The government has yet to repeal the hated pass laws or to devise mutually acceptable mechanisms for negotiations with black leaders.

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We must not overlook this regional aspect in assessing the South African issue. The region has seen almost continuous conflict with armed clashes taking place in South Africa, Zimbabwe, Mozambique, Namibia, Lesotho and Angola. Guerrilla attacks launched against South Africa from neighboring black states have provoked cross border retaliation by South Africa. One of the primary goals of our policy has been to reduce this violence between neighbors, and in this we believe we have had some success.

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A prohibition on bank loans would create a dangerous precedent undermining the U.S. policy that international capital markets should remain free of government interference and that lending decisions should be based on market rather than political considerations. If bank loans to South Africa should be prohibited, then South Africa would be the only country with which the United States has diplomatic relations that would be subject to a U.S. bank loan prohibition; this is an important precedent for the Banking Committee to bear in mind.

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In addition, any extension of an effective loan prohibition to cover foreign affiliates or branches of U.S. banks would raise serious questions about the extraterritorial application of U.S. law. The result would be strong objections from our allies who would consider their sovereignty violated.

The Administration also opposes the adoption of a prohibition on new investment in South Africa. Our opposition is based on three points. First, such a prohibition would limit opportunities for expansion by precisely those firms that have done the most to promote social change in South Africa. It would thus "freeze" the number of black employees benefitting from the Sullivan Code and similar codes of corporate conduct. Such a "freeze" would in turn slow the proccess of change inside South Africa in which the more progressive U.S. firms have been in the forefront.

Second, this measure would discriminate against U.S. firms that might desire to invest in South Africa, by offering in effect an oligopolistic situation for firms already there. To the extent that the absence of U.S. investment might create market opportunities in South Africa, there is little doubt that some of our economic competitors around the world would step in to fill such a gap.

Third, and most important, as a direct consequence of a prohibition on new investment, black South Africans would lose new job opportunities or be denied opportunities to be employed by the more progressive U.S. firms. An economy that must create 250,000 new jobs for young blacks each year, and that will have twice as many of them entering the job market by the turn of the century, needs more jobs, not less.

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Finally, other bills before you would impose a blanket prohibition on the export of nuclear equipment and technology. Such a prohibition would undermine our ability and leverage to broaden the application of international safeguards in countries that do not presently accept full-scope safeguards. Such a blanket prohibition on the export of all dual-use goods and nuclear equipment or technology to South Africa, as well as all other non-full scope safeguard states, would undercut our non-proliferation efforts and would reduce our influence in such countries' nuclear programs.

All applications for exports of nuclear-related equipment or assistance are already thoroughly reviewed as to their proliferation implications and their effect on foreign policy. In the case of states that have not accepted full-scope safeguards, only limited non-sensitive assistance is permitted -- and then only when it will advance our non-proliferation objectives. In the case of South Africa, our dialogue with that government on non-proliferation matters, coupled with a willingness to allow extremely limited, non-sensitive assistance to facilities in South Africa that are under IAEA safeguards, contributed to three important decisions by the South African Government last year: first, to require IAEA safeguards on all its nuclear exports; second, to export only according to the Nuclear Suppliers Group Guidelines; and third, to renew talks with the IAEA concerning placement of its semi-commercial uranium enrichment plant under IAEA safeguards.

In sum, Mr. Chairman, this Administration does not believe that any of the punitive measures in the bill before you, or similar ones in other bills that have been proposed, will hasten the demise of apartheid. We do not believe it is wise to withdraw the limited tools of influence we do have and simply hope the problem goes away. To impose sanctions might express our grief and anger over the violence that has recently taken the lives of so many in th Eastern Cape and elsewhere in South Africa. Such action would not however, ameliorate the burdens of the victims of apartheid. Indeed, the likely result would be to increase those burdens and squander our influence, thus making the U.S. essentially irrelevant to the process of change in South Africa.

In short, it is difficult to see how South Africa will be a better place without U.S. influence and presence there, limited though they are. If what we seek is to influence positive change within South Africa and to encourage regional stability (including the establishment of an independent and internationally recognized Namibia), then sanctions must be rejected.

Senator HEINZ. Secretary Dam, thank you very much. We are glad to have both you and Mr. Crocker here.

I think the administration's policies in southern Africa as relationships between countries are examined have had some very positive effects. You have managed somehow to reduce tensions between the Union of South Africa and Mozambique. There is, I suppose, some progress, although it's difficult to say in Namibia.

It is my understanding that South African troops may soon be removed from Angola where I gather South Africa has claimed that they have never been, but the issue that I think most members of the committee are focusing on is not so much the success of the administration's policies between countries as on the lack of success in bringing about constructive change in South Africa on the policies of apartheid.

PROBLEMS ARE GETTING WORSE, NOT BETTER

Indeed, it seems that the problems there are getting worse, not better. In the last 6 months there have been all too many examples of denationalization, of increased repression, of the arrest of many people for purely political activities, and you are as aware of the list as I am.

So I guess my first question to you is: Does the administration have as a goal the elimination of apartheid and, if so, how are you going about achieving that goal because simply waiting and seeing does not seem to be achieving that result?

Mr. DAM. Mr. Chairman, I will address those questions and comments. First of all, I'd like to introduce Mr. Frank Wisner. Mr. Crocker had to leave for another engagement. Mr. Wisner, his deputy, is here with me.

May I say at the outset in response to your first comment that while it's true that the focus of these hearings is on what is happening in South Africa, for those that care about an independent Namibia and reducing the prospect of violence and improving situations in the southern part of the hemisphere generally, we cannot overlook the fact that if we succeed in eliminating our influence and presence in South Africa we will not be able to contribute to a more peaceful situation.

So we can't keep it out of the picture, but I will go directly to your question about the situation in South Africa.

I agree with you that there have been some very unfortunate things that have happened in South Africa in the last few months and let me say also, lest I forget it, that this administration is unequivocably and directly opposed to apartheid in all of its manifestations. There is absolutely no equivocation on that subject. The President has spoken to it. The Secretary of State has spoken to it, and there has been no ambiguity on that subject.

The question is what to do about it, and that is the question—what to do about it? Is the thing to do about it to try to limit our influence there; to back out of South Africa economically and otherwise to make declarations which make us feel good but do not, as was practically admitted directly by the two witnesses who preceded me, have any prospect of having any real impact in South

Africa? Or is it better to try to proceed with the policy that we have had?

Now as I said, there has been some unfortunate violence in the last few months. On the other hand, if you compare the situation today with the situation 4 years ago, I think you will see there's been a lot of change. We don't take credit for particular changes. We do believe, however, that the policy of constructive engagement has set in motion a process of change and frankly a process of change that would come to a stop or at least substantially slow down if we were to completely change that policy toward one of sanctions and reprisal.

Let me give you a few examples. There has been in the past few years a major new influence of legitimacy for black trade unions. In fact, today, 50 percent of all trade unions are black. There is a new constitution and while it doesn't do anything for blacks it does take a step in the direction of sharing power for minority groups by giving power to coloreds and Asians.

It was mentioned this morning by the preceding witnesses that there has been the announced repeal of the Mixed Marriages and Immorality Acts as far as they affect mixed marriages and sexual relations between the races.

There has been a major increase in South Africa in education, mainly for black education. Educational opportunities for blacks in South Africa are greater because of that. There has been an announced opening of some 44 central business districts for black businesses. There has been a move to permit blacks to hold land through 99-year leaseholds roughly equivalent to the British system and moreover, an announcement of intention to move in the direction of permitting freehold ownership of land by blacks.

There has been a suspension of the forced removal of settled black communities while the Government is going forward to review its urbanization policy. There has been an explicit Government recognition, contrary to what we heard from the preceding two witnesses, that the homelands do not provide adequate political outlets for blacks. There has been a recognition that there has to be some better form, higher form of political representation for blacks.

Finally, there has been a Government commitment to address—they haven't done it yet, but a commitment to address the issue of citizenship for all South Africans, including blacks.

So I think it's wrong to say, Mr. Chairman, that there hasn't been any change and we are just waiting around hoping that something will turn up. It's not enough. The question is, will the proposals before you and in other bills before the Congress continue to move in that direction or will they have just the opposite effect. That's what we are talking about.

Senator HEINZ. That's an important question. I don't wish to minimize it by my question, but I really want to come to a conclusion on my question which is, is there any kind of meaningful progress that the U.S. Government, the Reagan administration, expects from the South African Government when it comes to the gut apartheid issue?

You mentioned, for example, that there has been a suspension of forced removals, one of the most repulsive but by no means the only repulsive acts in apartheid. If that suspension should not turn into a permanent suspension, what happens. It means that that practice will be resumed. That's moving backwards.

Now does our Government have, does the President have, does our Secretary of State have any internal guidelines for progress in these areas?

NOT OPERATING ON A BASIS OF CONDITIONALITY

Mr. **Dam**. We have been trying to move the South African Government, successfully I think, in the direction of removing the manifestations of apartheid and ultimately eliminating the system itself. We are doing that—in the last points I made—with some of the main pillars of apartheid. Maybe there will be backsliding. There hasn't been backsliding in any major degree. We are not operating on a basis of conditionality or setting up specific things that the South African Government has to meet by such and such a date. That is not the way in which we have been trying to work on this problem.

It's a different philosophy than the bill before you, which basically tries to take U.S. influence out of the area.

Senator **Heinz**. What's wrong with conditionality?

Mr. **Dam**. We don't think that making demands for specific steps by such and such a date will be successful. We have indicated that we wanted the manifestations of apartheid and ultimately the system itself to be removed. So we think that by working with the South African Government and in particular also, coming closer to the legislation here, by increasing the position in South Africa of forward looking American business which has through its adoption of the Sullivan principles created not only in the workplace but also outside the workplace a fair and more equitable life for black South Africans. We can make a greater impact and we have also been working in other ways by increasing the amount of money for black education and so forth. We're doing a number of things. It's a multifaceted policy which we think is going to be more successful than "a hit them over the head" kind of policy.

Senator **Heinz**. You have no objection to the principle of conditionality; you just don't like it here?

Mr. **Dam**. No. We don't think it will be effective in a rigid form here. There is talk about goals with South Africa, yes, but the notion that somehow or other by such and such a date they don't do X, Y, or Z that U.S. business investment will be cut off or something of that nature, then, no, we don't think that's effective.

Senator **Heinz**. My time is just about up. Let me just finish up on this point of conditionality. Ten days ago the President proposed with respect to Nicaragua a condition that if Nicaragua would enter into certain negotiations to achieve certain specific goals he would not continue to arm the country. That's conditionality. As I recollect the timeframe for it was 60 days. Is that correct?

Mr. **Dam**. Yes.

Senator **Heinz**. Now I don't like the Sandanista government, but to the best of my knowledge they don't practice anything as repulsive as apartheid. They have violated all kinds of rights of democracy, but as far as I know, they haven't been taking bulldozers and knocking down villages of people who don't agree with the central Government. They have infiltrated and limited the activities of many organizations—the press—but to my knowledge, they are a little more delicate in the way they handle people who disagree than the South Africans are who will prohibit a person who has associated with the wrong kind of people from being associated with. That's the bans for the rest of their life, a legal creation of pariahship that is strictly enforced.

Why do we think conditionality can work in Nicaragua to the exclusion of working anyplace else, like South Africa?

Mr. DAM. Well, in both countries we are trying to get the government to talk to the opposition. In that sense, there is a similarity in the two situations. Now there are also a lot of differences. We think things are moving in the wrong direction in Nicaragua. We think things are moving in the right direction, albeit very slowly, in South Africa, but nevertheless moving in the right direction. I think we also have to recognize that there's one other major difference. The situation—and we can debate this if you like—but the situation in the view of the administration and strongly the view of the President, and the reason he made this peace offer, this peace proposal, was that the situation in Nicaragua was a major national security danger to the United States.

Now I think that the situation in South Africa is different in that respect too. So there are a lot of differences. We are not saying that under no circumstances will conditionality ever work. We are saying that the present policy is working. The proponents of these sanctions don't really even argue that they will work. They say we ought to have them and I can understand that argument, but they are not saying it will lead to further positive results and I don't think it's reasonable to believe that they will.

Senator HEINZ. I want to explore that point with you later but my time has expired. Senator Proxmire.

Senator PROXMIRE. Mr. Dam, in 1981 a prestigious study committee called the Commission on U.S. Policy Toward South Africa published its report entitled "South Africa—Time Running Out." That commission was headed by the president of the Ford Foundation. It included the chairman of Xerox Corp.; the president of the AFL-CIO, Industrial Union Department; the chancellor of Vanderbilt University; the chairman of the Executive Committee Cummings Engine, and others.

That commission rejected instituting a trade embargo against South Africa and disinvestment of American corporations. Neither of those measures incidentally are in the bill we are considering now. The commission did recommend, however, that U.S. corporations and financial institutions operating in South Africa commit themselves to a policy of nonexpansion and those businesses not already there should not enter the country. That's precisely what we put into this S. 635, along with a no new bank loans policy.

Do you think that the study commission's report on South Africa was balanced and, if so, why do you continue to reject one of its key recommendations?

Mr. DAM. I think that the reasons that we do not favor the policy proposed by that particular commission is set forward in my testimony. I would be glad to review those points with you if you would like.

Senator PROXMIRE. Would you agree that the president of the Ford Foundation and the head of these other corporations along with the AFL-CIO represents a pretty good balance of American industry and labor?

Mr. DAM. I certainly think these are outstanding people, yes, and I don't have any problem about the composition.

Senator PROXMIRE. Well, let me ask you a question that you, particularly as Assistant Secretary of State, can give us excellent advice on.

We have a provision in S. 635 directing the President to undertake international negotiations to persuade other nations to adopt restrictions on new investment in and bank loans to South Africa. As you know, Sweden and Japan have already restricted investment there and a growing number of European legislators—I've talked with some of them recently—they are pushing for the same kind of thing and think they can get it through, particularly if we set an example.

If we pass the restrictions in S. 635 and persuaded other Western governments to do the same, wouldn't that help those whites in South Africa who want change and isolate those who do not and wouldn't more and more white South Africans see that present policies can only lead their country to economic disaster?

Mr. DAM. Well, Senator, you are asking a question with a great big condition at the beginning which I think we have to examine—the notion that all the countries—the Japanese, the Germans, the other Europeans, are going to cut off investment to South Africa. I just find that totally implausible and certainly everything that I have heard from those governments——

Senator PROXMIRE. I didn't say cut off. I said restricted in the way I suggested and I point out that Japan already does it. Japan has done it for some time and, of course, Sweden also does it. It's not as if none of these countries have done it in the past. But this country is so important because we are the principal trading partner, as you know, the No. 1 trading partner and we're the second biggest investor in South Africa.

Mr. DAM. I'm not familiar with your point about Japan. It seems to me Japan's role in South Africa has been growing very rapidly and certainly a number of European governments——

Senator PROXMIRE. It's possible and I would hope that our role would grow in South Africa in a constructive way, but they do restrain investment. That was one of the ways that they were able to get the so-called colored, which would include Asiatics as I understand it, for the first time to begin to get some influence, because they began to restrict investment. It seems to me we can follow that same precedent.

Mr. DAM. If the world were perfect and everybody would go along with us, we would have a different situation. I still question—let me put it this way. There is a question whether this would help the blacks in South Africa, which I think is an important issue.

SOVIET INTEREST IN SOUTHERN AFRICA INCREASES

Senator PROXMIRE. Let me ask you, Mr. Wisner, in March 1982, Mr. Crocker—I understand you're his deputy—stated before the Senate Judiciary Committee:

> In recent years we have noted a substantial increase in Soviet interest in southern Africa,

And noted,

> * * * in seeking to encourage South Africans to resolve their problems through peaceful evolutionary change, we stripped the Soviet Union of justification for fanning tensions within South Africa into a racial war.

Now it doesn't surprise me to see the Soviet Union trying to expand its influence in South Africa and I'm sure inadvertently we may be helping them to do so. Let's reflect on that for a moment.

Blacks in South Africa have condemned apartheid for over 30 years and during those 30 years we have expanded our economic involvement in their country. Blacks have no political rights, so how do they change the situation through the system? In December 1984, Bishop Tutu said,

> Blacks deplore communism as being atheistic and materialistic, but would regard the Russians as their saviors were they to come to South Africa because anything, in their view, would be better than apartheid."

Now I don't think we can spend another 30 years cajoling the South African Government to change. Time is running out, and that's why I favor the limited economic sanctions in S. 635.

Why do you think just continuing with constructive engagement is the way to combat Soviet influence with the blacks in South Africa? Why wouldn't the limited economic pressures in S. 635 help move the South African Government and let blacks know that we back their struggle for political rights?

Mr. WISNER. Senator, I don't think there's any doubt in the minds of black South Africans about where the United States stands. It's a very clear position. It's been spelled out from the highest levels of this Government over a number of administrations. What we have set about to do is to put our influence on the side of serious change and, as Secretary Dam said this morning, he's articulated a pattern of change inside that society, obviously not change that is adequate in its entirety, but change that indicates, or events that indicate, that serious, thorough undergoing change is taking place inside South Africa.

Senator PROXMIRE. Let me just ask at that point, Mr. Wisner, it seems to me that blacks might well ask why don't we put our money where our mouth is? When Senator Kennedy, who just testified before you, was in South Africa, as you know, he got a rocky treatment from the blacks in many cases because they felt he represented American policy, the Reagan policy. He was a U.S. Senator and that was their position. I think there is a misunderstanding. They feel we don't really have a policy backed up with any force. It's easy to make speeches, but it's something else to show that we mean business.

Mr. WISNER. Senator, I think you will find that there are a great many voices of South African black opinion, not just those who protested during Senator Kennedy's stay. You have a wide range of key black leaders. Bishop Tutu, for example, who is not in favor of disinvestment; the paramount chief of the Zulu people who is not in favor of it; the key leader of the urban blacks who has come out against it. You have a wide range of articulate, thoughtful South African black spokesmen who do not call for measures of disinvestment. And when I speak of disinvestment, I choose my words carefully because there are measures that lead inexorably to disinvestment. Blocking new investment, for example, is one of those measures.

SOUTH AFRICAN BLACKS OPPOSE ECONOMIC SANCTIONS

Senator **Proxmire**. Well, now let me point out what Bishop Tutu's position is on that and put this in the proper context. Many opponents of the type of limited economic sanctions in S. 635 say that South African blacks oppose economic sanctions and they rely on a survey conducted by a white South African professor, Professor Schlemmer, paid for by our State Department.

In regard to this issue, this is what Bishop Tutu said in December before the House Foreign Affairs Committee:

> You should be aware that if I support economic sanctions against South Africa, that is an indictable offense, and until recently, upon conviction the mandatory minimum sentence would be 5 years imprisonment,

which indicates how the South African Government regards the importance of foreign investment. He went on to say,

> We have a society that is ridden through and through with informants and when people are aware of any penalties for expressing unpopular views to authorities, it is highly unlikely they will say precisely what they really feel.

Do you think under those circumstances that Bishop Tutu's position on investment isn't necessarily colored by that? He says it is. He says he has to take that position or go to jail.

Mr. **Wisner**. There is no argument, Senator, that Bishop Tutu had to take the stand that he's taken. Let's be careful about what he's said. He wants to see change, only peaceful change, inside the society. Second, he's calling for that change to accelerate over the next 2 years and at the end of that 2-year period to see where South Africa stands.

Now the bishop isn't forced to make that statement. He made that statement because, one would have to assume, he means it. Other South Africans who speak against disinvestment are under no legal obligation to speak against it. When you go to the Schlemmer report, which you mentioned, and look at that report, the overwhelming majority of black South Africans did not support disinvestment and other South African polls also come out against disinvestment. You will also find they were polled on their views on the ANC and they spoke very clearly without intimidation as to their support for the ANC. So I think those observations, those statements of views of South Africans, either workers or articulate leaders, are things they believe in and I take them at face value.

S. 635 IS NOT A DISINVESTMENT BILL

Senator **Proxmire**. Well, my time is up, but let me just say our bill is not a disinvestment bill. It's not a disinvestment bill. It's a no new investment bill, which is quite different, plus the fact that it permits U.S. corporations to reinvest their profits that they have made in South Africa.

Mr. **Dam**. Although you would agree that the absence of new investment is going to lead to a decline over time of the position of American firms, would you not? Isn't that the point? What's the point of no new investment unless that's the result?

Senator **Proxmire**. Well, it's going to mean, I would hope, that we could begin to make some real progress in South Africa and, of course, the bill also provides that if the President sees real progress, he can repeal this, and if the House and Senate decide to do so, we can repeal any measure that's here. It's one that gives flexibility to the President and a basis for incentive and encouragement for the South Africans to change.

Mr. **Dam**. My comment would be that I doubt very much that a distinction in responses to these polls and public statements by South African black leaders would be made between what the bill proposes and disinvestment. They both deprive black South Africans of opportunities for employment.

Senator **Proxmire**. My time is up, Mr. Chairman.

Senator **Heinz**. Senator Proxmire, thank you. Senator Sarbanes.

Senator **Sarbanes**. Well, thank you, Mr. Chairman.

Mr. Secretary, you make the point on page 6 of your statement that our relationship with South Africa is not normal, or business as usual; is that correct?

Mr. **Dam**. That's correct.

Senator **Sarbanes**. Is it your view that our relationship with them, in the present circumstances, should not be normal?

Mr. **Dam**. My view is that we have struck approximately the right position, that is to say, we have shown our distance in a variety of ways.

Senator **Sarbanes**. You think we should stay such a distance——

Mr. **Dam**. While still being constructive in our relationship.

Senator **Sarbanes**. Do you think we should show some distance from South Africa?

Mr. **Dam**. Yes; as I said in the statement.

Senator **Sarbanes**. Now I'd like to take two or three of the items you listed to demonstrate that. One was the instruction to our representative at the IMF. Did the administration support that?

Mr. **Dam**. I believe not.

Senator **Sarbanes**. That was congressionally imposed, was it not?

Mr. **Dam**. I believe you're correct, Senator.

Senator **Sarbanes**. Was the restriction on the Eximbank congressionally imposed?

Mr. **Dam**. Yes; I believe it is legislatively imposed.

Senator **Sarbanes**. I find it interesting that the examples that you offered in stating that you don't think we ought to have a normal relationship because it would send the wrong signal about apartheid and in demonstrating the absence of a normal relationship, were instances congressionally imposed.

Mr. **Dam**. I believe that this occurred during the Carter administration.

Senator **Sarbanes**. The IMF restriction?

Mr. **Dam**. The Eximbank.

Senator **Sarbanes**. Do you support that Eximbank restriction?

Mr. **Dam**. What I'm saying in this statement is that our present position is approximately correct. Whether this particular limitation is effective and constructive and so forth might be questionable. We support it and carry it out.

Senator **Sarbanes**. In other words, you think you were wrong on the IMF position?

Mr. **Dam**. As I say, Senator, we accept the legislation. We are not quarreling with the legislation. We say that the move from these kinds of limited steps to something much more far reaching would have, on balance, a counterproductive effect.

Senator **Sarbanes**. I understand that position, but at an earlier time there was a difference in judgment and I'm now trying to find out what your judgment is on those matters, since there's a difference in judgment at the current time.

I take it you now support the IMF restriction.

Mr. **Dam**. I believe the President signed that bill. Therefore, unless I'm mistaken, he decided under all the circumstances to support it.

Senator **Sarbanes**. I think the bill included other things, but you do support that restriction?

Mr. **Dam**. We accept it as the law of the land, yes, Senator.

Senator **Sarbanes**. That's not my question. Do you support it as a matter of policy?

Mr. **Dam**. If you would like, I will go back and obtain an administration position on that issue.

Senator **Sarbanes**. Why don't you let us know the administration's position?

Mr. **Dam**. I will be glad to.

[The following information was subsequently submitted for the record:]

Current
Policy
No. 643

President Reagan

Rededication to the Cause of Human Rights

December 10, 1984

United States Department of State
Bureau of Public Affairs
Washington, D.C.

Following are remarks by President Reagan in a ceremony commemorating Bill of Rights Day, Human Rights Day and Week, 1984, in Washington, D.C., December 10, 1984. Also included is the text of the President's proclamation.

This ceremony marks more than another event on the White House calendar or another worthy cause for the national agenda; for in observing Human Rights Day, we rededicate ourselves to the cause of human dignity and freedom, a cause that goes to the heart of our national character and defines our national purpose.

So today, we dare to affirm again the commitment of the American people to the inalienable rights of all human beings. In reaffirming the moral beliefs that began our nation, we strive to make the United States what, we pray to God, it will always be—a beacon of hope to all the persecuted and oppressed of the world. And we resolve that, as a people, we'll never rest until the blessings of liberty and self-government are extended to all the nations of the Earth.

Two years ago in London, when I called for a crusade for freedom and human rights, I noted that these ideals—embodied in the rule of law, under God, and in the institutions of democratic self-government—were on the march. Because these ideals represent the oldest and noblest aspirations of the human spirit, I said then that this power is irresistible when compared to totalitarian ideologies that seek to roll back mankind's march to freedom.

Today, I want to take special note of evidence that this desire for self-determination, this recognition by the state of the inalienable rights of men and women everywhere; is nowhere stronger than close to our own borders in the lands of Latin America. In contrast to only a few years ago, today more than 90% of the people in Latin America and the Caribbean live in nations either democratically governed or moving in that direction.

While we're still doing all that we can to promote democratic change in nations such as Paraguay and Chile, we must not forget that over the last 5 years in Argentina, Bolivia, Ecuador, El Salvador, Honduras, Panama, Peru, and, most recently, in Uruguay, military juntas have been replaced by elected civilian governments. And just last Monday, democratic values triumphed again as the people of Grenada freely elected a new civilian prime minister.

Today, all who cherish human rights and individual freedom salute the people of the Americas for their great achievements. And we pledge to our neighbors the continued support and assistance of the United States as they transform our entire hemisphere into a haven for democracy, peace, and human rights.

In other nations farther from our shores, we've also seen progress toward reducing the repression of human rights and some strengthening of democratic institutions. In some of these nations, which have authoritarian governments but friendly ties to the United States and the community of democratic nations, quiet diplomacy has brought about humane and democratic change.

But we know there are occasions when quiet diplomacy is not enough, when we must remind the leaders of nations who are friendly to the United States that such friendship also carries responsibilities for them and for us. And that's why the United States calls for all governments to advance the democratic process and work toward a system of government based on the consent of the governed.

From our beginning, regard for human rights and the steady expansion of human freedom have defined the American experience. And they remain today the real, moral core of our foreign policy. The United States has said on many occasions that we view racism with repugnance. We feel a moral responsibility to speak out on this matter, to emphasize our concerns and our grief over the human and spiritual cost of apartheid in South Africa, to call upon the Government of South Africa to reach out to its black majority by ending the forced removal of blacks from their communities and the detention, without trial, and lengthy imprisonment of black leaders. Such action can comfort only those whose vision of South Africa's future is one of polarization, violence, and the final extinction of any hope for peaceful, democratic government. At the same time, we note with satisfaction that the South African Government has released 11 black leaders, including the top leaders of two of that country's most important labor unions.

Because we care deeply about the people of South Africa and the future of that nation, we ask that the constructive changes of recent years be broadened to address the aspirations of all South Africans. Peaceful change in South Africa, and throughout southern Africa, can come only when blacks and whites find a durable basis to live together, when they establish an effective dialogue, a dialogue sustained by adherence to democratic values and a belief in governments based on the consent of the governed. We urge both the Government and the people of South Africa to move toward a more just society. We pledge here today that if South Africans address the imperatives of constructive change, they will have the unswerving support of our government and people in this effort.

A few years ago, when I spoke of totalitarian ideologies as the greatest threat to personal freedom in the world today and the most persistent source of human suffering in our century, I also pointed out that the United States, too, has faced evils like racism, anti-Semitism, and other forms of intolerance and disregard for human freedom. So while we work to see human rights extended throughout the world, this observance of Human Rights Day reminds us of our responsibility to assure against injustice and intolerance in our own land as well. And today, I call on the American people to reaffirm, in our daily lives and in the workings of our private and governmental institutions, a commitment to brotherhood and equal justice under the law.

But we do a serious disservice to the cause of human rights if we forget that, however mistaken and wrong, however stumbling the actions of democracies in seeking to achieve the ideals of freedom and brotherhood, our philosophy of government permits us to acknowledge, debate, and then correct mistakes, injustices, and violations of human rights. Let us always remember the critical moral distinction of our time—the clear difference between a philosophy of government that acknowledges wrongdoing and injustice and one that refuses to admit to such injustices and even justifies its own assaults on individual liberty in the name of a chimeric, utopian vision. Such brutal affronts to the human conscience as the systematic suppression of individual liberty in the Soviet Union and the denial of religious expression by Christians, Jews, and Muslims in that country are tragic examples.

Today, for example, the largest remaining Jewish community in Europe, Soviet Jewry, is again being exposed to a systematic anti-Semitic campaign. Ominously, teachers of the Hebrew language have been arrested and their efforts to preserve their culture and religion treated as a crime.

Soviet authorities are continuing to threaten many "refuseniks" with confinement in psychiatric hospitals, expulsion from their jobs, and internal exile. Yet thousands of Soviet Jews have applied for permission to emigrate. We have insisted and shall continue to insist that those who wish to leave must be allowed to do so.

Our heart also goes out today to an individual who has worked so hard for human rights progress in the Soviet Union and suffered so much for his efforts—the Nobel Prize laureate, Dr. Andrei Sakharov. Nothing more clearly illustrates the absence of what our Founding Fathers called a "decent Respect to the Opinions of Mankind" than the cruel treatment of this great humanitarian. The Soviet Union, itself, would do much to regain respect within the international community if it would allow academician Sakharov and his wife, Yelena Bonner, to live the rest of their lives in dignity in a place of their own choosing. We're pleased to have the Sakharovs' son-in-law here with us today.

The Sakharovs are the best known victims of human rights violations in the Soviet Union, but thousands of other Soviet citizens, such as Uri Orlov, or Anatoli Shcharanskiy—whose wife, Avital, is here with us today—suffer in Soviet prisons and labor camps for the sole crimes of expressing a personal opinion, seeking to emigrate, or openly expressing their love of God.

We Americans recognize a special responsibility to speak for the oppressed, wherever they may be. We think here of special cases like the persecution of the Baha'i religious minority in Iran. But we also acknowledge a special obligation to speak for those who suffer the repression of totalitarian regimes, regimes that refuse to acknowledge and correct injustice and that justify absolute state power even as they seek to extend their cruel rule to other lands.

So, we call today for all free peoples of the world to unite in resisting and bringing to an end such intolerable practices as the suppression of free trade unionism, the campaign against the church and against political freedom in Nicaragua, the continuing Vietnamese occupation of Cambodia, and the barbaric war waged by Soviet troops in Afghanistan—a war which began 5 years ago this month with the Soviet invasion of that once nonaligned country.

As but one of the tragic consequences of Soviet actions in Afghanistan, more than one-third of the people of that country have fled from their homes and sought refuge in internal or external exile.

Finally, we welcome the recent steps taken by the Polish Government, but we urge that they are followed by lasting efforts for genuine, national reconciliation through effective dialogue with the Polish people.

So today, we, the people of the United States, in conjunction with other freedom-loving people everywhere in the world, rededicate ourselves to the cause of human rights, to the cause of democratic self-rule and human freedom. We reassert our belief that some day the repression of the human spirit and the special tragedy of totalitarian rule will be only a distant chapter in the human past. In doing so, we're deeply aware of our nation's long struggle toward achieving these goals and our own heritage of seeking to promote these ideals throughout the world.

Thomas Jefferson told us, "The mass of mankind has not been born with saddles on their backs." And the poet Archibald MacLeish once said that some say the hope for ". . . the liberation of humanity, the freedom of man and mind, is nothing but a dream. They are right. It is. It is the American dream."

Another great American literary figure, F. Scott Fitzgerald, suggested that America is "a willingness of the heart." We've recently read a great deal about the young people of this nation about whom, some say, this willingness of the heart no longer exists. Well, my own experiences with this generation suggest that the traditional idealism of the young, their hope to accomplish great things, their willingness to serve the cause of humanity are not only intact but stronger than ever. And like every generation before it, this generation hungers for a cause, for a mission that will take it outside itself and let it help lift humanity beyond the material and the immediate to new heights of human and spiritual progress.

So today, let us challenge these young Americans to make our nation an even better example of what it was always meant to be—champion of the oppressed, defender of all who reach for freedom and for the right of self-determination. Let us challenge young Americans, excited by technological and material progress, to ensure that this progress enriches political freedom and human dignity as well. Here's a challenge that's worthy of our youth, of their vision, their energy, and their vigor. Let our younger generation lead young people throughout the world to join the democratic nations in promoting human rights and self-government and the cause of human freedom.

The other night at the Kennedy Center, they had a choir, a UN choir of 90 young people, children, in the costumes of their native countries from all over the world. And looking at them down there, singing together, I couldn't help but think, "Good Lord, if we turn it all over to them, they'd get along just fine together." And maybe the world should follow their lead.

There is in the Book of Genesis a story of great loss. It's a story of man alienated from his fellow man and turning to persecution and hatred for others. Well, I believe that history is slowly working itself back to the restoration of brotherhood and mutual respect among all the peoples of the Earth. So today, we rededicate ourselves to this vision and mission. We do so mindful that human might and will alone cannot achieve this goal, aware that our ultimate success will be determined by our faith in the power of prayer, in the promises of Him who made us and even now guides us in our quest for human dignity and freedom.

And now I shall quit talking and sign the proclamation.

Today is now, for the week beginning today, it is now recognized officially as Human Rights Week. And the 15th will be Bill of Rights Day. ■

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United States Department of State
Washington, D.C. 20520

MAY 21 1985

Dear Mr. Chairman:

This is in response to your request of April 16, 1985 to Deputy Secretary of State Dam regarding the views of the Administration on S. 635, "a bill to express the opposition of the United States to the system of apartheid in South Africa, and for other purposes."

S. 635 contains six principal measures: first, a prohibition on new U.S. bank loans to the South African Government or any entity controlled or owned by that government (with certain exceptions); second, a prohibition on new U.S. investment in South Africa (with certain exceptions); third, a prohibition on the importation of Krugerrands or other gold coins minted in South Africa; fourth, a prohibition on the export of computers, software or related computer services to the South African Government or entities controlled or owned by it; fifth, the establishment of a procedure for limited waivers of some of these provisions under certain conditions; and sixth, a requirement that the President attempt to persuade other countries to adopt similar policies.

Before outlining some of the specific objections which the Administration has to the individual measures contained in this bill, I should like to explain the Administration's differences with those who seek to impose additional punitive sanctions on South Africa.

We recognize the strong need of Americans to express disapproval of any system which institutionalizes racial discrimination. The U.S. Government and the people of this country are on record as strongly supporting the policies reflected in section 2 of this bill, including the condemnation of apartheid and the goal of seeking its eradication. The sponsors of S. 635 believe that the United States can best realize the latter objective by the punitive measures proposed in the bill. We do not share this view, nor does the Administration support comparable measures that have been proposed in other bills.

The Honorable
John Heinz,
Chairman, International Finance and
Monetary Policy Subcommittee,
United States Senate.

In our view, S. 635 will not advance the goals we share with respect to South Africa. We wish to see apartheid eradicated and the establishment of a just government based on the consent of all the governed. The Administration believes that the influence of the United States should be used in such a manner that these goals can be advanced, recognizing that meaningful change will only be brought about by the people of South Africa and not by our actions. We should adopt measures and policies which can realistically influence the people of South Africa, and not measures which will only serve to distance the United States from the process of change that is taking place in that country.

In the case of South Africa, punitive measures such as those proposed in S. 635 are the wrong signal to send at this time. They are far more likely to harden opposition to change in South Africa than to bring about additional reform. The South African Government has in recent years initiated a program of reform which has caused a serious split among the Afrikaner people. While the pace of change is less than what we desire, this course of action should be encouraged. Recent actions -- such as the decision to repeal some of the offensive laws relating to interracial marriages and the decison to promote equal education opportunities for all races -- are steps in the right direction, and they should not be cast aside as irrelevant or empty gestures. Punitive measures will only strengthen those opposed to fundamental change in South Africa, and could easily lead to retaliatory trade and other measures which would ultimately damage the interests of the victims of apartheid and the U.S. business community.

As discussed in further detail below, we believe that sanctions will not cause the South African Government to change its objectionable policies, nor will they improve the political and economic plight of black South Africans or further the economic or national security interests of the United States. In our view, the way to influence change in South Africa is to use the resources available to the United States in a positive rather than negative manner. We should encourage the positive efforts of U.S. firms to pursue enlightened labor practices and the efforts of the AFL-CIO to train black trade unionists. We should make the most of the extensive scholarship and training programs sponsored by the U.S. Government and pursue the use of the diplomatic and political leverage of this country. These influences should be maintained and increased to affect the rate and direction of the change already underway there.

Our evaluation of the specific provisions of the bill follows.

1. Prohibition on Loans

The Department of State opposes the prohibition on U.S. bank loans to the South African Government and entities owned or controlled by that government (with narrow exceptions for certain educational, housing, and health loans). This measure would create a dangerous precedent in terms of financial policy. It would undermine the Administration's position that, except in circumstances involving national security or a national emergency, international capital markets should remain free of government interference and lending decisions should be based on market rather than political considerations. If bank loans to South Africa should be prohibited, then South Africa would be the only country with which the U.S. maintains full diplomatic relations that would be subject to a U.S. bank loan prohibition.

In addition, any extension of an effective loan prohibition to cover foreign affiliates of U.S. banks would raise serious questions about the extraterritorial application of U.S. law. It can be anticipated that such action will result in objections from our allies, as well as the kind of difficulties that we have experienced in past cases involving the enforcement of U.S. laws in foreign countries.

One other result of such a prohibition would be that parastatal agencies unconnected with the implementation of apartheid policy, such as the Electricity Supply Commission, would be unable to obtain U.S. financing for the purchase of American products. In this way, we would only penalize U.S. banks and firms doing significant business with these entities, without making any real impact on the South Africa Government. Undoubtedly, other foreign banks would replace U.S. banks as a lending source, and their factories would benefit from the orders that would have gone to U.S. firms.

2. Prohibition on New Investment

We oppose the adoption of a prohibition on new investment in South Africa (including bank loans to non-governmental entities in that country). It would limit opportunities for expansion by precisely those firms which have done the most to promote social change in South Africa. As a direct consequence, black South Africans would lose new job opportunities and be denied employment with the more progressive U.S. firms. The U.S. firms which have adopted the Sullivan Principles employ about 70 percent of the non-whites working for all U.S. firms in South Africa. These firms are in highly visible and important sectors such as automotive manufacture, pharmaceuticals, petrochemicals and computers. They serve as a catalyst for change through their vigorous pursuit of improvements for their non-white employees both in the workplace and outside the workplace, especially in the area of housing, education and health. Punitive legislation which would restrict the expansion of such firms, and thereby limit the numbers of new employees, would "freeze" the number of black South Africans benefiting from the Sullivan Code. Such a "freeze" would in turn slow the process of change inside South Africa -- a process in which the more progressive U.S. firms have been in the forefront.

It is important to emphasize that this section of the bill would also prohibit new U.S. bank lending to South Africa, in effect extending the bank loan prohibitions of Section 4 to cover all U.S. bank lending to South Africa (which is more than $4 billion). This could have very serious financial implications for international banking and, to the degree the ban is not offset by other foreign lending, for the Souh African economy. Such a measure would have serious repercussions for U.S. exports to South Africa and thus for employment in the U.S., as well as for blacks employed in South Africa whose positions would be imperiled because of the bill's economic impact.

As in the case of the prohibition on bank loans, the bill's proposed ban on new U.S. investment in South Africa would apply to foreign affiliates of U.S. firms. The resulting extraterritorial application of U.S. law is certain to give rise to frictions with our allies. It is noted in this connection that a recent Swedish measure on investments in South Africa which could have a limited extraterritorial effect was sharply criticized by the OECD earlier this year.

In addition, this measure would discriminate against U.S. firms which might desire to invest in South Africa by offering economic advantages to firms already there. A prohibition on new U.S. investment would deprive us of market opportunities in South Africa. There is little doubt that our economic competitors around the world would readily step in to fill such a gap.

U.S. companies would see this measure as a punitive move against them. It would foster an unfriendly business climate, forcing U.S. firms to reconsider their existing investments in South Africa. Its terms, for example, would block U.S. firms from providing capital from the U.S. for local subsidiaries caught in the current economic downturn, thus effectively limiting management's ability to cope effectively with the vagaries of the marketplace. This is unfair and unjust. Should these firms withdraw or reduce their operations, black

South African employees would be the first to suffer since they would either lose their jobs or be taken over by less enlightened management. It is an indisputable fact that U.S. firms are the leaders in good corporate citizenship and fair employment practices in South Africa, and in our view it does not make sense to penalize these leading corporate voices for change.

It is very clear from the recent Swedish experience with the curtailment of investments that the prohibition on new investments leads in practice to disinvestment. By interfering with the normal flow of capital, firms are rendered less able to compete. It is likely that a number of firms will decide that it is no longer in their economic interest to fight these pressures and pull-out. Since 1979, when Sweden took measures to block new investments, the number of Swedish firms in South Africa has dropped by almost 50%, from 31 to 17, and local employment has dropped by a similar percentage -- from 5,500 to 2,800. There is no reason to believe that U.S. firms would react any differently.

Black South Africans recognize the implications of such threats to their economic livelihood. Three recent polls have shown that the majority of black South Africans oppose efforts to reduce or eliminate foreign investments in South Africa. A survey conducted in 1984 by the widely-respected sociologist Lawrence Schlemmer of the University of Natal, which was partly funded by the Department of State, concluded that while many black South Africans support the goals of the banned African National Congress, fully 75 percent of those polled were opposed to measures that would result in the reduction of investments and job opportunities in South Africa. This conclusion has been validated in two other recent surveys.

3. Prohibition on Krugerrand Imports

The symbolic gesture of prohibiting the import of the privately minted South African gold coin, the Krugerrand, is not based on sound economic principles. Since all forms of gold bullion or coin are near-perfect substitutes, prohibiting Krugerrand imports into the U.S. would simply change the composition of worldwide flows and different regional markets without affecting the overall level of South Africa's gold exports. Other sources would replace U.S. imports of South African gold. Similarly, South Africa would fill the gap in other markets created by the diversion of those gold supplies to the United States. Even if we accept, for a moment, that the legislation may actually succeed in reducing South African gold sales, there would be an economic impact on that country. But the proposal would also harm South African blacks, hundreds of thousands of whom work in the gold mining industry, as well as tens of thousands of Africans from a half-dozen countries as far away as Malawi who work in South Africa's gold mines. We would be telling the black workers of South Africa what is best for them, and in the process we would be punishing the very victims of the apartheid system.

The proposed prohibition on the import of Krugerrands also raises serious issues regarding the international legal obligations of the United States. The same issue has arisen with respect to the proposed ban on landing rights for South African airlines and the denial of tax credits for U.S. firms doing business in South Africa, both of which are contained in bills introduced in the House of Representatives. The latter two prohibitions would be clearly inconsistent with international agreements currently in force with South Africa.

The Krugerrand issue is far more complex. The proposed ban would appear to violate the prohibitions in the General Agreement on Tariffs and Trade relating to quantitative restrictions on imports from countries that are parties to the GATT (e.g., Article XI and XIII). The GATT does contain a general exception in Article XX for measures "relating to the importation or exportation of gold or silver." Such measures, however, are subject to the qualification that they may not "constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail." This latter phrase has generally been interpreted to mean trade-related conditions rather than political ones. Whether a flat ban on the importation of Krugerrands would be in violation of the GATT would ultimately be decided by the GATT Council should a challenge be brought by South Africa, and it is not clear whether the GATT Council would construe the limited qualification in Article XX as permitting any selective import ban based on political or moral grounds.

It is also difficult to predict whether South Africa would choose to raise a GATT challenge were we to impose an import ban on Krugerrands. South Africa has filed a GATT challenge against Canada with respect to a provincial sales tax which discriminates against imported gold coins, including the Krugerrands. If South Africa was to challenge any import ban on Krugerrands imposed by the U.S., the GATT could authorize South Africa to take retaliatory measures against U.S. trade proportionate to the effects of the ban on South Africa. Such authorization could be granted even if the ban does not violate the GATT, since the GATT provides relief for GATT-consistent actions that "nullify or impair" the benefits of the GATT.

A related GATT issue is whether the "Most Favored Nation" rights accorded to South Africa under Article 1 of the GATT could be suspended or terminated on human rights grounds. The limited general exceptions provided in Article XX of the GATT relating to certain products (referred to above) and the security exceptions in Article XXI do not provide a basis to deny MFN rights based on human rights grounds. The denial of MFN treatment would accordingly be inconsistent with the GATT.

4. Ban on Computer Exports

A ban on the export of almost all computers to or for use by the South African Government or its parastatals is unnecessarily burdensome and restrictive. The United States Government already exercises extensive controls over the export of computers to South Africa. Prospective computer exports to South Africa are examined on a case-by-case basis to ensure that U.S. computers will not be used either to enhance South Africa's military or nuclear capability or to enforce apartheid. We fail to see how denying U.S. computers to South African Government agencies such as the South African Reserve Bank or the Electricity Supply Commission would lessen the ability of the South African Government to enforce apartheid.

The end result of the enactment of such a bill would be that the United States will be harmed more than South Africa. South Africa's public sector owns close to 50 percent of that country's gross domestic fixed investment. A ban on the sale of computers and software would eliminate almost one-half of our yearly $200 million computer, parts, and software sales to South Africa. Further, many of the remaining sales to South Africa's private sector will probably be lost also, since U.S. firms will no longer be viewed as reliable suppliers. This is a trend we are already seeing in South Africa.

One must recognize, however, that the economic impact on South Africa would be minimal. South African import statistics show that other countries, especially Japan, have the capability to step in and exploit any unilateral withdrawal by the United States. Japan's average yearly growth rate in the South African computer market was 206 percent between 1976 and 1983. Its share of the market has increased from 1.2 percent to 6.9 percent, with total computer sales equaling $24.1 million in 1983. It has been especially aggressive in the sale of mainframe computers. The surge in Japanese computer sales to South Africa coincides with the imposition of special U.S. foreign policy export controls on computer sales to South Africa. Britain and West Germany, which together control 27 percent of the South African computer market, would also increase their sales to South Africa. Other countries have also shown their willingness and capability to exploit any withdrawal on the part of the United States.

5. Waiverability of Some Provisions

Two of the prohibitions contained in the bill (i.e., those on new investments and the import of Krugerrands) may be waived for periods of up to 18 months if the President makes certain determinations, but only if Joint Resolutions are enacted approving the determinations. The Department of State opposes this unrealistic and time consuming procedure for such limited waivers.

6. Negotiations by the President

S. 635 would require that the President try to persuade the governments of other countries to adopt comparable restrictions of the kind contained in the bill (e.g., on new investment, bank loans, computer exports, and the import of Krugerrands). The Department of State strongly opposes this provision. Since we do not favor the adoption of these punitive measures by the United States, we are obviously unable to support a provision which would require negotiations with other countries on these matters.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely,

Wm Ball

William L. Ball, III
Assistant Secretary
Legislative and Intergovernmental Affairs

Senator SARBANES. If you don't support it, I think you ought to drop it from examples when you make your point about distancing ourselves.

Mr. DAM. It's intended to be a factual statement as to the fact that our commercial relationship is now also restricted. That's what the lead sentence in the paragraph says.

Senator SARBANES. Is it your view that the U.S. policy on South Africa is perceived, at least by many in South Africa and elsewhere in the world, as indulging the apartheid policy of the South African Government?

Mr. DAM. That our policy is indulging South African apartheid?

Senator SARBANES. Is so perceived by many in South Africa and elsewhere in the world?

Mr. DAM. Oh, I have no doubt that there are many people who perceive it that way. I would hesitate to draw a conclusion as to how the people in South Africa look at it. There is, of course, the survey that Senator Proxmire referred to on attitudes toward the investment-disinvestment issue. There have been other surveys of the same character. In all of those cases blacks have felt that disinvestment would be a mistake. That's also the situation, since you asked, in the United States, which the Harris poll reported in Business Week.

So I would say the majority of people don't look at it that way. They think the current policy is the better part of good judgment.

Senator SARBANES. As Senator Proxmire pointed out, this bill doesn't call for disinvestment.

Mr. DAM. Well, I don't know exactly how many people would follow this position if that distinction was pointed out to them. You're, obviously, addressing a large question and you can make fine print of great issues, but in general they were opposed to a change in policy on investment. I don't think anybody would disagree with that.

Senator SARBANES. How high a price do you think the United States is paying elsewhere in the world for our policy in South Africa?

Mr. DAM. I think, on balance, our policy in the southern part of Africa, including our policy of constructive engagement with South Africa, has won us a lot of support and respect.

Senator SARBANES. Where?

Mr. DAM. In Europe.

Senator SARBANES. On what issue?

Mr. DAM. On our entire policy in the southern part of Africa, including the policy of constructive engagement. I don't think you can separate that.

Senator SARBANES. Do you think the policy is working on Namibia? I notice you made the reference at the close of your statement. Do you think the moves the South African Government is now making are inconsistent with the position of the contract group in the U.N. framework?

Mr. DAM. I'm sorry. Would you ask the question again, Senator. I didn't grasp all of the aspects of it.

Senator SARBANES. You made a specific reference to Namibia at the close of your statement.

Mr. DAM. Yes, sir.

Senator SARBANES. Do you view the policies or the steps the South African Government has announced as pursuing the track of the contract group in the U.N. framework or seeking to circumvent it?

U.N. SECURITY RESOLUTION 435

Mr. DAM. Well, I think there's been tremendous progress made over the last few years in moving toward the implementation of U.N. Security Resolution 435, including steps of withdrawing their troops from Namibia, including their willingness to talk about security conditions. You're probably referring to their latest——

Senator SARBANES. Do you think the meetings they are currently having in Windhoek are an effort to implement U.N. Resolution 435?

Mr. DAM. I'd like to ask Mr. Wisner to respond to that. That's a complicated question and he's been directly involved in that.

Mr. WISNER. Senator, concerning the announcement you referred to with respect to changes in the internal administration, we have informed the South African Government very clearly that we see the outcome in Namibia must continue to be based on an international settlement that is negotiated along the lines of the U.N. Security Resolution 435.

The South African Government has made it clear on its part that it will honor its commitments to these international settlements and we intend to hold the South Africans to that position.

Senator SARBANES. Now you made that representation to them, I take it, because you were concerned that those moves might in fact be an effort to go outside the framework of U.N. Resolution 435?

Mr. WISNER. There were proposals from the multiparty conference that would have moved beyond the framework of 435, in our judgment, but as I say, at the moment, we continue to insist and are pursuing a track that leads toward U.N. Resolution 435 at the center of the negotiation and we are not going to budge from that.

Senator SARBANES. Mr. Secretary, on the movement in a positive direction that you have cited, what do you make of the arrest of the United Democratic Front [UDF] leadership and the possibility of them facing very serious charges?

First of all, what's your view of the UDF as an organization and of its leaders?

Mr. DAM. We are very opposed to the arrest and proposed trial of these leaders and we made that known directly, privately to the South Africans, and we made it known publicly. We have condemned these measures.

Senator SARBANES. And what's your view of the United Democratic Front?

Mr. DAM. In what sense? It's a political party and we believe in political parties. We believe in the democratic process. Are you asking me to endorse it?

Senator SARBANES. Do you think it should have the freedom to operate?

Mr. DAM. Yes.

Senator SARBANES. Therefore, you abhor the arrests?

Mr. DAM. Yes, indeed.

Senator **Sarbanes**. I'm not clear from your statement whether you think American policy can or cannot influence what the South African Government does. You seem to argue it both ways in your statement.

Mr. **Dam**. We think a wise and patient policy can have constructive results, yes.

Senator **Sarbanes**. So you think it can influence the South African Government?

Mr. **Dam**. Yes, sir; I think there are limits to our influence, but I think we have some influence by our presence and by our continued dialog with them.

Senator **Sarbanes**. Do you think that influence, at least to some degree, has to be reflected in our distancing ourselves from South Africa? Is that correct? In other words, bring pressure to bear?

Mr. **Dam**. We think that there has to be a clear statement of our position on apartheid and the distancing to a limited extent has been helpful.

QUIET DIPLOMACY MAY COMMUNICATE THE WRONG MESSAGE

Senator **Sarbanes**. We have to make a judgment here as to whether the policy of quiet diplomacy is so quiet that it may in fact communicate the wrong message both to the South African Government and elements within South African society and elsewhere that the United States, despite its rhetoric, in effect tolerates or indulges this regime. That had to be done earlier with respect, for example, to the IMF restrictions, did it not?

Mr. **Dam**. I agree with you that it's important to make a judgment about exactly what kind of stance is most productive.

In other words, this is not a prototypical quiet diplomacy situation in which the Government does not say anything at all. We are very outspoken on the subject of apartheid.

Senator **Sarbanes**. Well, do something as well as say something.

Mr. **Dam**. Well, the question is——

Senator **Sarbanes**. You indicate you support certain instances in which restrictive measures were taken; is that correct?

Mr. **Dam**. Well, to a very limited extent. Many of the measures that have been taken have been taken with regard to a policy. We just had this discussion, Senator, about the IMF language and I promised to go back and obtain for you on behalf of the administration our position on that. I think measures that reduce the presence of the American business community in South Africa are counterproductive for the black population of South Africa. I think anything which eliminates our diplomatic presence or reduces it is bad. So you have to look at this measure by measure. I agree that it is a difficult question.

Senator **Sarbanes**. Now, Senator Proxmire asked you whether we should restrict investment if other nations did restrict theirs, should we do it, and you answered, "If the world were perfect and everyone would go along, we would have a different situation." So I take it your position is that if other countries would join in the restriction, then you would support it.

Mr. **Dam**. I think that's a totally hypothetical situation. Not only do other countries not go along with the idea; they are very actively opposed to the notion of this. This is a universal problem with sanctions, Senator. The United States imposes sanctions and other people do not go along. As a result, the sanctions are ineffective. That is the history of sanctions.

Senator **SARBANES**. Is the only basis to your opposition to sanctions that they couldn't be universally applied? If they could be universally applied would you be in favor of them?

Mr. **DAM**. No; I wouldn't be in favor of them because I think there are other reasons why. Many of the arguments I have been making to you would not apply, but the fact of the matter is that I also think we should take measures which help the blacks in South Africa and I think that the elimination of investment in South Africa would be bad for them. It would cause unemployment. It would cause hardship and misery. I think also it would be creating a situation in which one could not hope to carry out the demands of U.N. Resolution 435. So I think there are a lot of other reasons.

Senator **SARBANES**. How many blacks work for U.S. firms in South Africa?

Mr. **DAM**. Approximately 120,000, if I remember correctly.

Senator **SARBANES**. And how many blacks are there in South Africa.

Mr. **DAM**. This is only about 1 percent of the labor force. I think it ought to be expanded, not decreased.

Senator **SARBANES**. What's the black population in South Africa?

Mr. **DAM**. I don't have that in my head.

Senator **SARBANES**. 22 million?

Mr. **DAM**. That sounds right to me.

Senator **SARBANES**. And 120,000 are employed by American firms, so 120,000 are impacted by the American firms?

Mr. **DAM**. It's approximately 1 percent of the labor force, Senator.

Senator **SARBANES**. And of the 120,000 impacted by American firms, how many are impacted by firms that have adopted the Sullivan principles?

Mr. **DAM**. It's approximately 70 percent. I can provide the latest report to you on that subject.

Senator **SARBANES**. You're against requiring American firms to adhere to the Sullivan principles. You're even against that kind of step, I take it.

Mr. **DAM**. Yes, for two basic reasons, Senator. First, we think that the genus of the Sullivan principles have been their voluntary nature and we think that their example can move other countries in the direction of getting to follow the same principles.

Second, we are very opposed to trying to create an extraterritorial regulatory system in which we here in Washington try to regulate labor practices in another country. I think that is a formula for all kinds of problems.

Senator **SARBANES**. I gather my time is up. You may at some point have to choose between trying to influence or simply ending the relationship. Do you favor continuing a relationship indefinitely with a regime that practices apartheid?

Mr. **DAM**. What we favor is the policy that I have given.

Senator SARBANES. Well, what's the answer to my question? Do you favor continuing indefinitely the relationship with a regime that practices apartheid?

Mr. DAM. We are opposed to apartheid. We are in favor of trying to have construction relationship with them and I have gone through——

Senator SARBANES. I want to—because my time is up——

Mr. DAM. May I answer, Senator?

Senator SARBANES. My time is short. What I'm trying to get at is whether your reason for pursuing this line—suppose the apartheid policy doesn't change. Do you favor maintaining the constructive engagement relationship?

PRESENT POLICY MAY HAVE TO BE REEXAMINED

Mr. DAM. If there were no change beyond that achieved today, then at some point in the future obviously our policy would have to be reexamined. But there's been a lot of movement which I have outlined to you over just the last year or two, and I think that this would be a terrible time—the worst time to change course.

Senator SARBANES. Is it the administration's view, in your opinion, that if apartheid is not dismantled the American relationship with South Africa would have to come to an end?

Mr. DAM. Senator, the apartheid system is a despicable system. It's also very deeply rooted. And I don't think there's any person from any political persuasion that thinks it's going to disappear in the next year or 2 years. What we have to do—the executive branch and the legislative branch—is to develop policies that will bring it to an end as soon as possible. All we are disagreeing about, if we do disagree, is about what policy is best calculated to achieve that result that we both seek.

Senator SARBANES. You and I differ on how far we would be prepared to go. How important to us are the economic benefits of the American relationship with South Africa? How heavily should we weigh those in the scale as we consider the despicable apartheid regime? Do we create a balance in which we weigh the negatives of a despicable apartheid regime with the economic benefits that flow to U.S. firms and to the United States from the economic relationship?

Mr. DAM. I think the economic benefits are there, but I think they are a very small fact in the overall situation of what we are trying to achieve. There are some problems involving strategic materials which I think, in considering the policy that you're now advocating of turning our back completely on South Africa, would have to be weighed in the balance. But I don't think that's fundamentally what we're talking about. We are talking about what kind of policy is best calculated to bring to an end a system of apartheid and bring peace to the southern part of the hemisphere.

Senator HEINZ. The gentleman's time has expired.

Senator SARBANES. Thank you, Mr. Chairman.

Senator HEINZ. Mr. Dam, I've got one last question. You said that you oppose anything having to do with investment restrictions. You have also said that you oppose the provision that is in this legislation and was in legislation last year that prohibits

American banks from loaning to the South African Government or its instrumentalities and at the same time you have made much of the fact that there are in the law, as Senator Sarbanes enumerated at some length with you, a number of provisions that the administration either supports or acquiesces in as appropriate policy.

For example, it's my understanding that the administration does support that lengthy list of prohibited items controlled by the Export Administration Act, the net result of which is to prohibit the export of anything that would enhance the capabilities or continue the capabilities of the South African police or the South African military. My understanding is that the administration actually supports that.

Now what is the difference between the administration opposing the sale of arms for the South African police with which to repress black South Africans and being on record legally, in opposing bank loans to the South African Government since it can use the money and go to somebody else and buy those arms, as indeed they are doing? Why is it not inconsistent for the administration to say we are against selling arms, but it's all right for American banks to lend money to the South African Government to buy the same arms from somebody else?

Mr. DAM. I will answer your question, but I would like to suggest that perhaps it would be useful, since there are many questions like this, to provide a more technical memorandum going through the specific provisions, in answer to some of Senator Sarbanes' questions along the same lines.

Senator HEINZ. The committee would love to have that if you would furnish that to us.

[The following information was subsequently submitted for the record:]

CHECK LIST: POSITIVE DEVELOPMENTS IN SOUTH AFRICA

Question. What are the positive developments taking place inside South Africa to which the administration refers?

Answer. Legalization of black trade unions.

The impact of the Sullivan code: U.S. firms in forefront of improving conditions for blacks in the workplace and in black communities. Ripple effect—other foreign firms and South African firms implementing similar codes.

The adoption of the new Constitution by white voters in November 1983. The Constitution is flawed because it does not address the question of political rights for the country's black majority. It does, however, for the first time, share political power at the national level, albeit in a limited way, with non-whites.

State President Botha's speech to the new Parliament last month invited the nation's blacks to engage in a dialog to discuss changes in the laws governing: (1) urban black residency rights; (2) black ownership of land; (3) influx control; (4) citizenship of blacks; (5) review the forced removal policy; and (6) discuss some national political role for urban blacks. In essence, this implies movement away from apartheid.

The Government's decision to suspend forced removals pending a review of the policy.

A Government action which gives blacks residency rights in the Eastern Cape.

A Government decision to permit members of all races to own and operate businesses in the central business districts of the nation's cities.

Moves to rescind the Mixed Marriages and Immorality Acts which are currently based on racial separation.

On the regional front there has also been progress. The drive to bring peace to southern Africa is essential to the achievement of change inside South Africa.

All parties have agreed to the terms of UNSC Res. 435, the UN's plan for Namibian independence. This includes South Africa.

Only the issue of Cuban troop withdrawal from Angola holds up implementation of Namibian independence. Angola and South Africa are addressing this last remaining issue now with U.S. encouragement and diplomatic help.

South Africa's disengagement from Angola is almost complete.

The Nkomati Accord between South Africa and Mozambique is alive and South Africa is attempting to negotiate a ceasefire between the government in Maputo and the anti-government Renamo guerrillas.

TARGETING BANK LOANS

Mr. DAM. I will say, in response to your question, I think the problem with the bank loan provision is that it's going to the parastatal of all kinds. It means that loans cannot be made to South African Airways. That doesn't help the black population. That doesn't protect them. The same way with the various public utilities. That doesn't help the black population. If anything, it hurts them. It's a line-drawing problem and it's a difficult problem, but there is a difference between taking direct measures with regard to the police and the military to limit what they can do, and trying to harm the South African Government and their economy in general.

Senator HEINZ. Just so we're talking about the same bill, as I understand S. 635—and I'm not a cosponsor of it—my understanding of the bank loan provision is that no American bank can make a loan to any government in the South African Government unless the loan involves educational, housing, or health facilities that are readily available to all persons regardless of race. It is qualified to a considerable extent against the concern that you expressed.

Let's assume that it can be perfected so that it really is targeted.

Mr. DAM. The targeting I'm talking about is different, not only targeting by allowing loans to certain social areas like housing and so forth. I am saying that the blacks of South Africa benefit by a strong economy. Now it happens that something like 50 percent of business activity in South Africa is carried out by parastatal organizations. So that would just leave the other half of the economy.

When I talk about targeting, I'm talking about avoiding assisting in activities which would directly and demonstrably have a negative effect on the welfare of the black population.

Senator HEINZ. I understand that, but when we loan $500 million to the South African Government I think you have to stretch pretty far to say that that is job creating investment which is the principal argument you make.

Mr. DAM. I don't think you have to because these are not, as I understand it—if I'm wrong, I'd like to be able to correct myself for the record—but it's my understanding that most of these loans go to enterprises just like in Britain loans are made to these state enterprises—the coal board and the electricity council and so forth. The South Africans have a very analogous system and what we would be depriving by the United States limiting loans in the public utilities area is the public in South Africa.

Senator HEINZ. I understand that, but you know as well as I do that as to the extent the South Africans choose to borrow out of one pocket that frees them to borrow for military, police, or other purposes from their own.

Mr. DAM. Money is fungible and it may be a problem of that character, but I think with public enterprises it's pretty easy to see what the fund flows are and, again, as I say, these are not absolutely unambiguous lines, but the problem here is one of statesmanship of drawing a line and I think that this bill and other bills that I discussed go too far in the direction of turning our back on South Africa.

Senator HEINZ. Secretary Dam, I have some additional questions, nine of them, that I would like to submit for the record. I see no further interest in questions from the other members of the committee. But I must say, in all seriousness, we have reached a point here in the Congress where I think legislation is going to pass. Indeed, legislation, if we're going to be realistic and truthful about it, in fact passed the House and Senate last year. There was almost no substantive objection from Members of Congress, House and Senate, to those two bills. There was on the part of the House bill a major distinction. There was an investment freeze or a no new investment limitation in at least one version of the House bills. That affected American companies only. I suspect that particular provision would have a less welcome reception in the Senate than it had in the House, but nonetheless, we shouldn't fool ourselves into thinking that there is not a substantial amount of House and Senate bipartisan support for doing something more than we are doing now and it is in part related to the fact that the perception of constructive engagement as an effective force in bringing about peaceful change in South Africa is simply not yielding the results that you would like it to yield and this perception is premised on the fact that we see things slip backward in the last 3 to 6 months.

It would seem to me that the administration would be well advised to do everything it can within its policy framework to get better results if it can because it is results—or I should say the lack of them—that has the majority of the House and Senate very, very concerned.

If you care to respond you can, but I don't ask you to respond.

Mr. DAM. Well, thank you, Mr. Chairman. I appreciate the opportunity to explain our policy. We recognize the great interest in Congress on this subject and we don't think that the issue is easy, but we do think they have to be approached carefully so that a wise policy is arrived at.

Senator HEINZ. Very well. Secretary Dam and Secretary Wisner, thank you very much for being with us.

The hearing is adjourned.

[Whereupon, at 1:30 p.m., the hearing was adjourned.]

[Response to written questions of Senators Heinz, Hecht, Mattingly, Proxmire, and Sarbanes follow:]

DEPARTMENT OF STATE
WASHINGTON

June 7, 1985

Dear Senator Heinz:

Thank you for your letter of April 18 transmitting those questions which arose from my recent appearance before the Senate Committee on Banking, Housing and Urban Affairs. I am pleased to enclose responses to those questions and to two questions posed by Senator Sarbanes during the hearings.

Sincerely,

Kenneth W. Dam
Acting Secretary

Enclosures:
1. Correspondence returned
2. Answers to Questions by Committee Members
3. Check List: Positive Developments in South Africa
4. President Reagan - Rededication to the Cause of Human Rights

The Honorable
John Heinz,
United States Senate.

HEINZ QUESTIONS

ADMINISTRATION ON VIOLENCE

1. Q. Would you please enumerate the specific steps the Administration has taken to respond to the recent growing wave of violence in South Africa?

A. The Administration, from the President on down, has consistently spoken out against apartheid, including specific public condemnations of violence, killings, forced removals and detentions which have occurred over the past several months. In addition, we have made known to the South African Government in our private communications and at the highest levels our concern over the violence and its manifestations. We have informed the South African Government that our relationship with it cannot be "normal" until there is significant progress in moving away from apartheid toward a system based on the consent of all of the governed. We have called repeatedly for a halt to the violence engulfing South Africa and have urged that a meaningful dialogue begin between the government on the one hand and the leaders of the black community on the other.

SULLIVAN PRINCIPLES

2. Q. What specific steps in the past year has our Government taken to promote implementation of the Sullivan principles by American companies operating in South Africa?

A. On at least two separate occasions, the Secretary of State has acted to encourage U.S. firms operating in South Africa to adhere to a fair labor code in South Africa. In March, 1984, he hosted a luncheon at Blair House for Reverend Sullivan and 30 executives of major U.S. firms with investments in South

Africa, Sullivan signators and non-signators alike, to encourage their adherence to a code. This year, the Secretary sent personal letters to Chief Executive Officers of some of the largest U.S. firms located in South Africa which are not Sullivan Code adherents, urging them to become subscribers to the Code. These efforts have undoubtedly played a role in the adherence of over 20 companies in the past year. Also, all Department officials concerned with South Africa regularly take the opportunity of urging U.S. firms to adhere to the Sullivan Code or similar policies in their daily business dealings with these corporations.

U.S. FIRMS/SOUTH AFRICAN ECONOMY

3. Q. What is the ability of South Africa to maintain its economy without the participation of American companies?

A. Clearly the U.S. is important to South Africa, but more for political and social than economic reasons. U.S. direct investment (book value) at the end of 1983 (latest available figures) stood at $2.3 billion, or approximately 17% of total foreign investment in South Africa. This amount, however, represented only 3% of all investment in South Africa. U.S. investment covered a wide scope of activity but little, if any, is critical to the continued existence and well-being of the South African economy. Were U.S. firms forced to leave South Africa, their assets would likely be purchased by other foreign investors or by South African investors at "fire sale" prices.

In short, South Africa would be readily able to sustain normal economic activity in the absence of U.S. firms.

U.S. BUSINESS EFFECTS ON TRANSITION

4. Q. What would be the prospects of peaceful transition without the participation of American businesses in the economy?

A. About half of the 300-odd U.S. firms operating in South Africa are signatories to the Sullivan Code. These Sullivan signatories employ approximately 70% of the total number of employees working for all U.S. firms in South Africa. It is generally acknowledged that U.S. firms, especially Sullivan firms, have been trend setters in implementing fair labor practices which go well beyond the workplace and which touch upon the well-being of the employee and his family outside the workplace in areas of education, health and training. Other firms, foreign and South African alike, have used the Sullivan Code as a model for their own set of fair labor practices. Clearly, South African black employees benefit from the Sullivan Code and similar codes. Hence, our policy of encouraging all U.S. firms in South Africa to implement the Sullivan principles is, we believe, contributory to those whose efforts are aimed at peaceful, positive change away from apartheid toward a system of government based on the consent of all the governed. The ultimate nature of the transition of political power in South Africa is an issue which goes well beyond the participation of the U.S. business community, especially given the fact that all U.S. firms in South Africa account for about only one percent of total employment. I would, however, suggest that the real value of the Sullivan Code lies in its influence as a model of what the total business community can contribute to a more prosperous and stable South Africa.

PROMOTING REFORM

5. Q. There are in South Africa within the Government reformist groups and those that resist reform. What steps can we take to strengthen the influence of those promoting reform and encourage those who would resist to be more receptive to reform? What are the economic vulnerabilities of the groups that oppose movement to majority rule?

A. Our policy toward South Africa is specifically designed to encourage reform and its proponents. We have rejected punitive measures as a means of aiding the reform process; they would be counterproductive and stiffen the resistence of those who are not reform minded now. We have lent our political and economic and moral support to the proponents of change in South Africa and have encouraged them to hasten the process and make it more meaningful. Through our assistance program to the black community (about $10 million annually), we have attempted to encourage positive, non-violent change through the provision of expanded educational opportunities, labor and entreprenurial training and have encouraged the promotion of human rights. We would welcome the cooperation of the Congress both in enlarging these programs directed at blacks as well as support for those whites who have recognized the need for change away from apartheid.

DISINVESTMENT AS A SIGNAL

6. Q. What sort of signal would disinvestment send to the radical and communist forces in southern Africa? What sort of interpretation do you think the Soviets would put on our actions, particularly regarding whether we would stand aside if they were to begin aiding the radical forces in a big way?

A. Disinvestment would signal a U.S. unwillingness to pursue the only logical course of action open to us, which is attempting to promote peaceful change in South Africa. Withdrawal of U.S. business interests would remove one of the few tools of influence available to us in helping to promote change and would leave a moral void that would result in a lessening of both regional U.S. influence and our ability to help influence movement away from apartheid. Disinvestment would clearly embolden them to increase assistance to radical forces to push for the revolutionary overthrow of the South African Government. Besides this psychological and political signal, U.S. disinvestment could contribute to unemployment and unrest, with not only 70,000 workers jobs being jeopardized but the livelihood of the approximately 400,000 others who depend on them for support. This would increase the great social unrest already widespread in that country. We do not think this is what America is about.

SUCCESS OF CONSTRUCTIVE ENGAGEMENT

7. Q. As I noted earlier, constructive engagement has not had any notable successes with respect to the elimination of apartheid in South Africa. No meaningful progress has been made -- even attempts to upgrade the social, economic and educational status of the blacks has been spotty at best, and the black majority is still denied civil rights. Can you recommend any specific policy changes to help bring about an end to apartheid more rapidly and that would produce some tangible progress?

A. I would respectfully but strongly disagree with the premise of your question, namely that "constructive engagement has not had any notable successes with respect to the elimination of apartheid in South Africa." Although we do not and should not take credit for the changes which have taken place as a result of the reform effort which has been underway in South Africa for the past several years, there is, nevertheless, more than a happy coincidence between major reform in that country and the advent of the current U.S. Administration. I am attaching herewith a partial listing of the major changes away from apartheid in South Africa which have occurred over the past several years. These reforms are only a beginning but should be encouraged and built upon, not minimized. We accept, based on the facts, such as the 2-1 vote among whites on the new constitution in 1983, that the white community and the Government of South Africa have recognized the need to and have shown a willingness to change, to move away from apartheid both in spirit and in fact, and have pursued a course of action toward that end. This does not mean to imply that all white

South Africans are in agreement with the reform process, for there is a considerable opposition to the government's reform policy. It is this very opposition, expressed politically, which contributes to the caution sometimes exercised by the government in announcing and implementing further reform. Were we to posture ourselves in an adversarial manner vis-a-vis the government there, it would only serve to strengthen the forces opposing reform. Clearly, our position should be to encourage reform whenever possible and to speak out, as we regularly do, when the reform effort is negated or in other ways retarded.

COOPERATION ON SANCTIONS

8. Q. Economic sanctions have had a poor success rate when imposed by only one country. What international cooperation could we expect for the type of sanctions mandated under S.635? What efforts are being made to persuade other countries to participate with the United States in its current policies toward South Africa?

A. We seriously doubt that others in the international community would be prepared to apply meaningful economic sanctions against the South African Government. Some are prohibited by law from such activity. Indeed, some would take advantage of our "disengagement" to further their own economic and political ends. We regularly consult with our allies on the issue of apartheid and how to help speed its demise and seek agreement with the basic thrust of our policy, namely that pressure should continue to be exerted on the SAG to demonstrate that the West is appalled by apartheid and seeks a speedy change away from that system toward a more just society. The code of conduct adopted by some European companies is an example where our policies work in tandem.

QUIET DIPLOMACY

9. Q. In your testimony you refer, and the Administration frequently refers as well, to "quiet diplomacy". Would you explain for the Committee what the key elements of this "quiet diplomacy" are? What specific action by the Administration has it involved?

A. "Quiet diplomacy" is not a policy but a tactic for carrying out our efforts to help persuade the South African Government that it is in its own interest to abolish apartheid and establish a more just order in that country. We reject the approach of using only strident public rhetoric against the South African Government's actions as being largely symbolic and ineffective. What we seek to do is to choose the appropriate medium, be it public or private, to enunciate clearly our opposition to the policy of apartheid while also seeking to encourage the South African Government to pursue a process of reform that has been underway for several years. We believe it is reasonable to use the most productive tactics available to encourage peaceful changes rather than to simply strike out with rhetorical pronouncements which condemn that effort and thereby distance us and remove our limited influence from the reform effort. I would add only that when the situation has called for strong public statements we have not failed in our obligation to make our views known loudly and clearly. At other times, however, the situation called for "quiet diplomacy" as a means of achieving our objectives in a more effective manner than public, strident rhetoric would provide.

HECHT QUESTIONS

HOW U.S. CAN INFLUENCE SAG

1. Q. Since you don't agree with the bill, what do you think is the proper way for the United States Government to make its influence felt in South Africa?

A. We believe that the path we have embarked upon of encouraging positive change within South Africa by staying constructively involved there is more likely to lead to the results we all desire, namely movement away from apartheid toward a more just society, than will the enactment of punitive measures directed at that Government, the South African people and our interests there. We fully support the efforts of Congress to provide economic assistance to those black South Africans disadvantaged by apartheid and would welcome an expansion of programs in the fields of human rights, education, health, training, entrepreneurship, etc. We also welcome the expressions of interest and concern by the Congress on issues such as apartheid in general and specific injustices caused by apartheid in particular. All such efforts are of invaluable assistance to us in our attempt to demonstrate to the SAG that its policy of apartheid is unacceptable to the American people and that our bilateral relationship cannot flourish without meaningful change. This message is heard and well understood by the SAG and contributes to the pressure mounting on it to enhance the ongoing reform program.

U.S. REACTION TO SAG INITIATIVES

2. Q. What importance do you attach to the South African Government's proposal to abolish the mixed marriage and immorality laws, and its announcement of the withdrawal of troops from Angola by the end of this week?

A. The SAG's intention to support in the parliament the repeal of the Mixed Marriages and Sec. 16 of the Immorality Act are of significant symbolic value. It represents the dismantling of an important pillar of apartheid and is further evidence of a willingness on the part of South African whites to continue and strengthen the reform process away from apartheid and to put additional teeth into that effort. Taken alone such an action may not seem terribly significant to some Americans but combined with other efforts on the part of the white community and Government, it shows a clear willingness to break with the apartheid past.

MATTINGLY QUESTIONS

RELATIONSHIP OF NAMIBIA TO REFORM

1. Q. There is a belief that a solution in Namibia is central to South African internal reform. Do you agree with this assessment of the critical nature of that particular issue in making progress against the system of apartheid?

A. There is undoubtedly some correlation between [illegible] the Namibian independence issue and progress on internal reform in South Africa. This is particularly true in the economic area as the war in Namibia is estimated to cost the South African Government some $1.2 billion annually at the same time that South Africa finds itself in the midst of a severe economic recession coupled with growing costs associated with the maintenance of apartheid. Undoubtedly, the savings that would accrue from a peaceful settlement of the Namibia issue could be applied toward furthering black education, health, social welfare, et. al., within South Africa, with a consequent lessening of political and economic tensions which such a transfer of resources would entail. However, the reform process in South Africa is driven by its own internal dynamic, and the economic reality of 9 million blacks in the urban area. Events in Namibia will have little sustained impact on this process, one way or the other.

PROXMIRE QUESTIONS

FAILURE OF U.S. POLICY

1. Q. Do you dispute any of the above facts about the situation in South Africa? If not, how can you maintain your policy is not a failure based on its results?

A. With due respect, I take exception with the Senator's premise that constructive engagement is a failed policy and the assertions he makes to support this contention. I attach for the Senator's information a partial compilation of the changes which have taken place in South Africa over the past several years in furtherance of the reform process away from apartheid. While we admit that apartheid still exists and that the pace and nature of the changes are not what we desire, it is equally important to recall that there have been historic decisions taken by the whites of South Africa to change the apartheid system. Certain practices noted by the Senator, I am happy to say, are no longer in effect. For example, in January the South African Government announced a halt to the forced removal of blacks while the policy is reviewed. In his speech of January 25, the State President called for consideration of national citizenship for urban blacks, the beginning of a genuine dialogue between the Government and the black community's leaders and a higher level national political role for certain blacks, thus conceding that the homelands policy has failed. Also, despite problems, more labor unions flourish. While much remains to be done in furtherance of the effort to move away from apartheid, to maintain that there has been little or no change is to ignore history and the reality of South Africa in 1985 compared to just eight or ten years ago.

HUMAN RIGHTS POLICY

2. Q. How do you account for the discrepancy in your treatment between human rights violations in other countries as opposed to South Africa?

A. We do not believe that there is a discrepancy in our treatment of human rights violations in South Africa compared to other countries; including countries such as Cuba, the USS Poland, Nicaragua, Libya and Vietnam. We have spoken out clearly and often of our abhorrence of such violations. In th case of South Africa, I would refer the Senator to the Human Rights Report for 1985 prepared by the Department of State, which has been generally viewed as a definitive and accurate description of the human rights situation in that country. The Administration, from the President on down, has condemned apartheid and South Africa's violation of human rights on a regular basis. On December 10, 1984 (Human Rights Day), President Reagan spoke out forcefully and eloquently on this subject. I am enclosing a copy of the President's remarks for reference purposes. The record shows that other administration officials, including the Secretary of State, have made clear their opposition to apartheid. The same record also demonstrates that the State Department, through its press spokesmen and other officials, has regularly enuciated its opposition to human rights violations in South Africa and elsewhere.

MANDATORY SULLIVAN CODE

3. Q. If you are so concerned that blacks in the 140 U.S. companies benefit from the Sullivan Code, why don't you favor mandatory extension of that Code to the other 160 companies that don't adhere to that Code presently?

A. We oppose mandatory implementation of the Sullivan Code by U.S. firms in South Africa for several reasons. Firstly, we believe it is the very voluntary aspect of the Code which has made it so successful. I would submit that these adherents to the code have gone well beyond what is strictly called for by the Code and have spent over $100 million since 1978 outside the workplace for the benefit of their black employees and families. The money was utilized on the furtherance of education, training, health and promotion of black entrepreneurship. A mandatory U.S. Government enforced code would more than likely have resulted in these same firms doing the absolute minimum demanded rather than in having gone a considerable distance beyond that which is called for. More importantly, implementation of a mandatory code raises serious questions regarding the extraterritorial application of U.S. law. The U.S.G. could not enforce the implementation of such a mandatory code without the agreement of the very Government it is designed to influence. Even if the South African Government "permitted" such an extraterritorial application of U.S. law, implementation would require the establishment of a complex regulatory regime and the diversion of personnel from their normal diplomatic and consular tasks. While it is true that U.S. firms employ only about 1% of the active labor force in South Africa, nevertheless, these are among the largest firms in the world and what they do is noticed. There can be no doubt but that these firms have and are leading the way, through adherence to the Sullivan Code and related fair employment codes, is setting a good example to other businesses. Many foreign investors now adhere to similar codes such as the EEC Code or have established their own employment codes. A significant number of South African firms have established such codes and are now practicing enlightened employment standards. Thus, the point is that the Sullivan Codes stands as a beacon for others, a model to emulate in furthering the advancement of black employee rights and benefits both in and outside of the workplace.

SARBANES QUESTIONS

EXIM

1. Q. Does the Administration support the prohibition on EXIM guarantees or loans to the South African Government and the certification requirements relating to fair labor standards required by the Evans Amendment for loans or guarantees to private persons in South Africa?

A. The Administration opposed the Evans Amendment on policy and legal grounds while it was being considered in the 95th Congress. The Department of State indicated that implementation would be difficult to achieve without the cooperation of the South African Government, and this has proven to be the case. The SAG perceived the law as being extraterritorial in scope. It prevented its nationals from providing the kind of information necessary for a certification to the U.S. Government. An understanding was ultimately reached with the SAG which permitted firms to apply for EXIM support. However, it was only in late 1984 (six years after the law was enacted) that the Department of State was able to certify two South African firms as being eligible for EXIM support, although no transactions have been approved by the bank to date. The Administration strictly enforces the law, but it continues to have the same doubts regarding its merits.

IMF

2. Q. Does the Administration support the instructions to the U.S. Executive Director of the IMF "to actively oppose any facility involving the use of Fund credit by any country which practices apartheid"?

A. It is clear that the Administration supports and enforces the law of the land. President Reagan's signing of P.L. 98-181 in November 1983 indicates his support for the bill. The Administration opposed initial efforts to require the USED of the Fund to oppose and vote against drawings by South Africa on the grounds that such a step would inject political considerations into a specialized agency of an apolitical character. The Administration did not oppose the provision as embodied in Section 43 of the Bretton Woods Agreements Act because economic criteria similar to those employed by the Fund would be used to form and evaluate the U.S. position. Section 43 requires the USED to "actively oppose any facility involving the use of Fund credit by any country which practices apartheid" unless the Secretary of the Treasury certifies and documents and appears, if requested, before Committees of the House and Senate that the drawing (1) would reduce the severe constraints on labor and capital mobility, (2) would reduce other inefficient labor and capital supply rigidities, (3) would benefit economically the majority of the people, and (4) that the country is suffering from a balance of payments imbalance that cannot be met by recourse to private capital markets. On December 22, 1983, three weeks after this provision was signed into law, the U.S. Treasury adopted an implementation memorandum for this provision specifiying the obligations of the Secretary of the Treasury and various procedures to be followed.

ANTI-APARTHEID ACT OF 1985

FRIDAY, MAY 24, 1985

U.S. SENATE, COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS, SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY,
Washington, DC.

The subcommittee met at 9:30 a.m., in room SD-538, Dirksen Senate Office Building, Senator John Heinz (chairman of the committee) presiding.

Present: Senators Heinz, Gorton, Mattingly, Hecht, Proxmire, Sasser, Riegle, Sarbanes, and Cranston.

OPENING STATEMENT OF SENATOR HEINZ

Senator HEINZ. Ladies and gentlemen, today we will have the second of the series of hearings dealing with the legislative proposals to alter the economic framework for the U.S. Government's relationship with the Republic of South Africa.

At our last hearing we heard from the administration and from Senators Kennedy and Weicker who, along with several of my committee colleagues, have drafted legislation to deal with this issue. Next month the subcommittee plans a concluding hearing by receiving testimony from Rev. Leon Sullivan and a number of other former officials who dealt with this question in order to provide a historical context for the committee's deliberations in order to obtain their views on the proposals for future action.

This morning we are going to hear testimony from academic and legal experts on the subject and from those who directly represent or audit U.S. companies that currently do business in South Africa.

As I said at the outset of these hearings, in my own evaluation of the proposals dealing with South Africa I have tended to be guided by four criteria.

First, it is the South African Government which is the agent of apartheid. The target of our actions therefore should be the Government, not the people of South Africa.

Second, as a logical companion to the first criteria, we should strive to avoid actions that have an adverse impact on South Africa's black majority who are the victims of the repugnant system of apartheid.

Third, our key objective should be to develop policies that help change peacefully the policies and practices of the South African Government. Sanctions are appropriate to that goal, but we must avoid, at least in this Senator's judgment, sanctions that totally cut us off from any ability to play a meaningful role or influence policy in the future.

As I have learned in the course of revising and studying the history of the Export Administration Act, economic and political sanctions are imprecise tools of foreign policy. If they are not used adroitly and with deliberate care, they may yield the opposite effect from what is intended.

Finally, American business has made a positive contribution to the betterment of the economic and social condition of blacks in South Africa.

But the key issue before this committee and indeed before the Congress is whether the American economic presence in South Africa is helpful in achieving the political goal of a peaceful end to apartheid or, in the alternative, whether it is merely an agent in perpetuating that hateful system.

To better understand the role of American business, today's hearing will examine how our corporations indeed operate in South Africa today and what might be the political and economic consequences of disinvestment.

Ambassador McHenry will also be able to comment on the premise of the Carter administration policy toward South Africa.

I must say our witnesses today are eminent and eminently qualified to comment on such questions and I'd like to turn to them now, but before I do I want to yield to my colleagues for any opening statements they may care to make.

Senator Proxmire.

OPENING STATEMENT OF SENATOR PROXMIRE

Senator PROXMIRE. Thank you very much, Mr. Chairman.

Mr. Chairman, today we have the second in what will be a series of three hearings on S. 635, the Anti-Apartheid Act of 1985. Our final hearing will be held on June 13 and I hope we can then move to mark up this legislation as soon as possible, preferably by June 17. The full House has already started floor action on an identical bill and I understand will complete their consideration of that legislation shortly after the Memorial Day recess. I hope the full Senate will act in late June or July and we can get a bill to the President before the end of the summer.

Mr. Chairman, the South African system of apartheid against which this legislation is aimed is not simply a system of racial discrimination such as previously existed in parts of this country. It's even more reprehensible. Apartheid is a complete system of political, social, and labor controls adopted in 1948 and maintained by South Africa's 4.5 million whites to ensure their absolute and capricious rule over 22 million blacks.

Under that system black workers must live apart from their families. All blacks are required to live in separate segregated areas. They are denied equal or even minimum education, social, and economic opportunities and, most important of all, they are denied political rights.

Over the past 30 years American Presidents have condemned apartheid, but U.S. companies have invested billions in South Africa. We have become the country's largest trading partner. To black leaders looking for help in their struggle for freedom, it might appear that profits are America's only interest in South

Africa. This is not the case and our Government should take action to demonstrate that.

The crucial question is how to apply pressure on South Africa without putting at risk the perilous livelihoods of suppressed blacks.

S. 635, I believe, accomplishes both purposes. It is not—I repeat—it is not a disinvestment bill. It is not a disinvestment bill. It does not require American companies to withdraw the billions they have invested in South Africa or even prohibit them from reinvesting profits made in that country. It does not cut off our $4 billion trade with South Africa except for banning future imports of the krugerrand. The United States will continue to be South Africa's No. 1 trading partner and their second biggest creditor.

The bill does prohibit new investment—I repea —new investment in and bank loans to enterprises in South Africa. It bans bank loans to the South African Government, under some circumstances.

The bill also does ban further sales of computers to the South African Government because it uses them to help implement the police state controls needed to enforce its unjust policies.

These measures, while moderate, will strengthen the hand of those white South Africans who are arguing for a change in the apartheid system.

Furthermore, what the bill provides is that any time the President of the United States feels that the South Africans are moving in the direction of ridding themselves of apartheid, then he can propose that the restraints be lifted and if the House and Senate agree they are lifted. So, the incentive is there.

You must realize that since South African blacks presently have no political rights it makes it difficult for them to achieve a gradual peaceful change in their country's abhorrent system.

Soviet-preached violence is presented as an alternative. We know that violence would not be beneficial to white or black South Africans nor to United States interests in Africa.

The adoption of S. 635 is not only the right thing to do, but its adoption will serve America's interests far better than just continuing business as usual in South Africa and hoping for the best, and I will push for its enactment. Thank you.

Senator HEINZ. Senator Proxmire, thank you very much.

Senator Hecht.

Senator HECHT. Thank you, Mr. Chairman. Because of time restraints I will not make opening remarks. I am anxious to hear from the panel and perhaps I might lend a different voice to the voices you have heard already on this podium. Thank you.

Senator HEINZ. Thank you.

Senator Sarbanes.

Senator SARBANES. I have no statement.

Senator HEINZ. Very well. Gentlemen, we are pleased to have the four of you with us. I'm especially pleased to have Dr. Sheldon Hackney from the University of Pennsylvania. Senator Proxmire and I, as Yale men, have been consulting regarding Mr. Derek Bok from the Harvard University because we both have graduate degrees from Harvard and we are deeply honored to have him. Mr. Roy Schotland is from the Georgetown University Law School, and

Mr. Robert D'Agostino from the National Legal Center for the Public Interest.

Gentlemen, we welcome you all here and we will proceed in the order proposed on the witness list in terms of your presentation. So, let me at this point call on Dr. Hackney from my home State of Pennsylvania.

STATEMENT OF SHELDON HACKNEY, PRESIDENT, UNIVERSITY OF PENNSYLVANIA, PHILADELPHIA, PA

Mr. **Hackney**. Thank you very much, Mr. Chairman.

Mr. Chairman and members of the committee, it's a great pleasure for me to be here and I thank you for the opportunity to testify on S. 635, the Anti-Apartheid Act.

Let me begin by saying that the views that I express here are my own. They do not reflect an official position of the University of Pennsylvania. As a matter of policy, the university does not take positions on Federal legislation that does not directly affect higher education or the ability of the university to carry out its purpose, which is to serve the public through education and the expansion of knowledge. Speaking as a private citizen, I believe very deeply that action by the U.S. Government to signal our active opposition to apartheid is needed, and so I endorse S. 635.

UNITED IN OPPOSITION TO APARTHEID

The views I have developed, of course, do emerge from a long time of living and working in academia, from listening to the counsel of faculty, students, staff, and others in the Penn community on the South African regime and about the policy of apartheid. Like any great university, there is a diversity of voices at Penn. In fact, it is a very vibrant place for exchanging ideas, but on no international issue is the Penn campus as united as it is in its opposition to apartheid. I suspect that's probably true of most American campuses. Indeed, events of the past few months, both in South Africa and on our campuses make it incumbent upon us to think very carefully about apartheid and our national policy toward the South African regime which has established and sustained apartheid.

I believe it is instructive to mention the university's experience over many years in grappling with the issue of apartheid to illustrate both the university community's deep abhorrence of the pernicious policy of apartheid, and the reasons why it is ultimately the responsibility of the U.S. Government to act to combat South Africa's official system of racial segregation and discrimination. Years ago, in reaction to apartheid, Penn's trustees decided that, acting as responsible investors, the university should urge companies in its portfolio to adopt and vigorously implement the Sullivan principles. Our trustees also more recently, in 1982, agreed that the university should urge firms in which the university owns stock to refrain from making new or expanded investments in South Africa. That was in response to the Rockefeller Commission report. We also have sought every opportunity to encourage black South Africans to study at Penn.

The university developed its policies, including the use of selective divestment, based, among other factors, on the requirement that corporations in which we own stock adhere to the Sullivan principles in the hope that we could, in conjunction with other shareholders, help those companies abide by the very highest standard of business ethics and that we might influence those firms to improve the lives and conditions of the nonwhite majority in South Africa. I believe that the Sullivan principles have helped to ameliorate working conditions for blacks employed in the signatory firms. But it must be remembered that of the virtually 300 American companies which do business in South Africa, only about one-third are Sullivan signatories, and these employ only a small proportion of black South African workers. It is also clear that the best efforts of U.S. companies and their shareholders to improve economic conditions for black South African workers are not a substitute for a governmental response. Apartheid is a policy that transcends the economic realm and permeates the entire South African society. It unilaterally abrogates the rights of nonwhite South Africans, disenfranchises millions, limits their movement except when it suits the Government to transfer them to black homelands, restricts employment opportunities, makes nonpersons of the most outspoken members of nonwhite groups through the bizarre instrument known as banning.

NEED FOR FURTHER ACTION

Recent events in South Africa have made it apparent that the pervasive problem of apartheid will not be overcome without further action by the U.S. Government. Official violence against black South Africans is all too commonplace, as we read in the papers. Secretary Shultz indicates that incidents of violent encounter between blacks and policy during the past 9 months have resulted in more than 300 deaths among blacks.

Since apartheid is the official policy of the South African Government, it is essential that the United States respond to apartheid in the same way, in a governmental manner. The administration's passive policy of constructive engagement during the past 4 years has apparently not been successful in moving the South African Government to reconsider the fundamental underpinnings of apartheid. There have been some superficial actions of the South African Government, purporting to bestow full political participation upon Asians and coloreds, and eliminating the state prohibition against mixed marriages, but that only underscores the inherent venality of apartheid. Assistant Secretary of State Crocker's beliefs to the contrary, the South African Government has not yet recognized in practice that denying citizenship to South Africa's blacks is as unworkable as it is ludicrous.

Only Government-sponsored sanctions by the United States and other nations are likely to bring the South African Government to this realization, and it is for this reason that I support legislation to effect such sanctions. The legislation you are considering today, S. 635, appears to me to meet two essential standards: It allows continued United States economic leverage to be applied because it does not call for total disinvestment, and it avoids placing economic burdens on the nonwhite South Africans who are victims of apartheid. The bill is directed appropriately at the small minority that governs South Africa. Loans to the South African Government could still be made if the loans were to be used for educational or health facilities or housing made equally available to nonwhites and whites alike. Although new investments by American firms in South Africa would be restricted, reinvestment of earnings from existing business operations would be excepted from that restriction. Finally, the sanctions against new investments in South Africa and the importation of krugerrands to the United States could be lifted if the President determined—and the Congress approved such a finding—that political and social rights of nonwhite South Africans have been restored.

This bill calls for an historic response by the American Government to translate its condemnation of apartheid into workable actions. It represents an important first step toward concerted efforts by the United States, as a government, to promote the eradication of a policy so fundamentally abhorrent to all of us.

Thank you very much and I would be glad to respond to any questions.

[The complete prepared statement follows:]

Statement of Sheldon Hackney

University of Pennsylvania

Mr. Chairman and members of the Committee, thank you for your invitation to testify before you today concerning S. 635, the Anti-Apartheid Act.

The views that I express in this testimony are my own; they do not reflect an official position of the University of Pennsylvania. As a matter of policy, the University does not take positions on Federal legislation that does not directly affect higher education or the ability of the University to carry out its purpose, which is to serve the public through education and the expansion of knowledge. Speaking as a private citizen, I believe with a passion that action by the United States government, to signal our active opposition to apartheid, is needed, and I endorse S. 635.

The views I have developed, of course, emerge from listening to the counsel of faculty, students, staff and others in the Penn community on the South African regime and its policy of apartheid. Like any great university, Penn thrives on differences of judgment. On no international issue is the Penn campus as united as in its opposition to apartheid. Indeed, events of the past few months, both in South Africa and on our campuses, make it incumbent upon us to pay close attention to the subject of apartheid and to our national policy toward the South African regime that has established and sustained apartheid.

I believe it is instructive to mention the University's experience over many years in grappling with the issue of apartheid, to illustrate both the University community's deep abhorrence of the pernicious policy of apartheid, and the reasons why it is ultimately the responsibility of the United States

Government to act to combat South African's official system of racial segregation and discrimination. Years ago, in reaction to apartheid, Penn's trustees decided that, as a responsible investor, the University should urge companies in its portfolio to adopt and vigorously implement the Sullivan Principles. Our Trustees also agreed that the University should urge firms in which the University holds stock to refrain from making new or expanded investments in South Africa. We have also sought every opportunity to encourage black South Africans to study at Penn.

The University developed its policies, including the use of selective divestment based, among other factors, on the requirement that corporations in which we hold stock adhere to the Sullivan Principles, in the hope that Penn, in conjunction with other shareholders, might ensure that our companies abide by the highest standard of business ethics, and that we might influence these firms to improve the lives and conditions of the nonwhite majority in South Africa. I believe that the Sullivan Principles have helped to ameliorate working conditions for blacks employed in the signatory firms. But it must be remembered that of the virtually 300 American companies which do business in South Africa, only about one-third are Sullivan signatories, and these employ only a small proportion of black South African workers. It is also clear that the best efforts of U.S. companies and their shareholders to improve economic conditions for black South African workers are not a substitute for a governmental response. Apartheid is a policy that transcends the economic realm and permeates the entire South African society. It unilaterally abrogates the rights of nonwhite South Africans, disenfranchises millions, limits their movement except when it suits the government to transfer them to black "homelands", restricts employment opportunities, makes nonpersons of the most outspoken members of nonwhite groups through the bizarre instrument known as "banning".

Recent events in South Africa have made it apparent that the pervasive problem of apartheid will not be overcome without further action by the United States government. Official violence against black South Africans is all too commonplace - Secretary Schulze indicates that incidents of violent encounter between blacks and police during the past nine months have resulted in more than 300 deaths among blacks.

Since apartheid is the official policy of the South African government, it is essential that the United States' response to apartheid be governmental in nature. The Administration's passive policy of "constructive engagement" during the past four years has not been successful in moving the South African government to reconsider the fundamental underpinnings of apartheid. Superficial actions of the South African government - purporting to bestow full political participation upon Asians and "coloreds" and eliminating the state prohibition against mixed marriages - only underscore the inherent venality of apartheid. Assistant Secretary of State Crocker's beliefs to the contrary, the South African government has not yet recognized in practice that "denying citizenship to South Africa's blacks is as unworkable as it is ludicrous."

Only government-sponsored sanctions by the United States and other nations are likely to bring the South African government to this realization, and it is for this reason that I support legislation to effect such sanctions. The legislation you are considering today, S. 635, appears to meet two essential standards: It allows continued U.S. economic leverage to be applied (by eschewing divestment) and it avoids placing economic burdens on the nonwhite South Africans who are the victims of apartheid. The bill is directed, appropriately, at the small minority that governs South Africa. Loans to the South African government could still be made if the loans were to be used for educational or health facilities or housing made equally available to nonwhites and whites alike. Although new investments by American firms in South Africa would be restricted, reinvestment of earnings from existing business operations would be excepted from that restriction. Finally, the sanctions against new investments in South Africa and the importation of Krugerrands to the United States could be lifted if the President determined (and the Congress approved such a finding) that political and social rights of nonwhite South Africans have been restored.

This bill calls for an historic response by the American government to translate its condemnation of apartheid into workable actions. It represents an important first step toward concerted efforts by the United States, as a government, to promote the eradication of a policy so fundamentally abhorrent to all of us.

Senator HEINZ. Dr. Hackney, thank you very much.

Mr. Bok.

STATEMENT OF DEREK BOK, PRESIDENT, HARVARD UNIVERSITY, CAMBRIDGE, MA

Mr. BOK. Thank you.

Mr. Chairman and members of the committee, I appreciate the opportunity to testify on this bill and would like to make it clear, as my colleague Mr. Hackney did, that the views I express are my own. Harvard has no official position on foreign policy, but I have certainly developed a strong personal interest in the subject. It has been a lively topic of discussion on our campus for 12 consecutive years. I have also had the opportunity to serve for some years as the chairman of a program in which we try to obtain funds from universities, from foundations, from corporations, and from the U.S. Government to bring black students, nonwhite students, to study in this country and we have some 225 of them from South Africa today. Of course, we have also been deeply involved in the voting of stock on various issues involved in shareholder resolutions concerning South Africa over the last few years.

RISING TENSION IN SOUTH AFRICA

As Sheldon pointed out, we are here today against the background of a rising tension in South Africa. Over 3,000 arrests, more than 300 police killings, and over 1 million nonwhites participating in strikes and school boycotts. We have heard warnings by Bishop Tutu and other moderate leaders in South Africa of the danger of impending violence. We are thus constrained to try to decide what is it that we can do to avert greater violence and injustice.

I join with Sheldon in concluding that constructive engagement as a policy is not enough. There are initiatives that have been taken which are good. I do not believe they are sufficient to meet the gravity of the situation. One can criticize them on two grounds. First, the current policy is too easily misinterpreted as a kind of tacit acquiescence by this country in the status quo which is intolerable, I believe, to the American people. Second, the actual progress has been slight for the reasons that Sheldon pointed out.

I do believe, though, in trying to figure out how we can most effectively go beyond the present policy, that a policy of total disengagement from that country would also be unwarranted and unwise. I am not at all sure that we have enough leverage to influence the Government by that method. It would remove whatever chance we have of working constructively within the country, in particular the opportunities for American firms to improve working conditions, to express their opposition to influx control laws and forced relocation, and to provide educational and social opportunities as they have to the tune of many millions of dollars over the last few years. In addition the economic impact of such sanctions could end up harming blacks either by creating unemployment or by shifting control of American firms into hands of owners who have even less humane concerns than the American entrepreneurs who now control those enterprises.

So looking at the alternatives, the general approach taken in the Kennedy-Weicker bill seems to me to be the one most likely to capture the benefits of a more vigorous response while also minimizing the potential costs.

The bill does provide meaningful sanctions, but the sanctions fall directly on the Government—the point, Mr. Chairman, you made at the very beginning—and not on black employees. It does not remove the opportunities within South Africa for American firms to work in positive ways but, above all, it delivers a clear message of national concern, a message that, unlike our present policies, cannot be readily misinterpreted as tacit acquiescence.

ADDITIONAL MEASURES TO EXPLORE

I would not wish to conclude my testimony without making clear that I think, consistent with the approach taken in this bill, that there are additional measures which might profitably be explored. I, for one, would hope that legislation could make clear that bank loans are prohibited to all entities in South Africa and not just to the South African Government. It is comparatively easy to evade prohibitions on loans to the South African Government by simply loaning to South African banks. I think the bill should be clear on that point.

I would hope that one could look at the stockpiling of strategic metals, such as chrome, since imports of these metals enhance and increase our dependence on South Africa.

I would hope we could examine the possibility of reviewing at midterm the IMF loans to see whether that review could be used to encourage relaxations of the influx control laws.

All these added initiatives are consistent with the general approach taken in the Kennedy-Weicker bill which I firmly support, an approach which in my view seems best calculated to maximize the advantages and minimize the costs of all of the alternatives that we have before us.

Thank you very much.

[The complete prepared statement follows:]

STATEMENT OF DEREK BOK

PRESIDENT, HARVARD UNIVERSITY

Mr. Chairman, thank you for this opportunity to appear before you on the subject of South African apartheid and the vexing question of how the United States can best work to bring about its demise.

Let me make clear at the outset that the following opinions are my own and do not represent the official views of Harvard University. Like other universities, Harvard does not take institutional positions on any federal legislation that does not directly affect higher education. On the other hand, my duties over a long period have led me to pay close attention to events in South Africa and to develop personal views on the affairs of that country.

Almost ninety years ago, Justice John Marshall Harlan wrote a prophetic dissent to the Supreme Court decision in Plessy v. Ferguson upholding state-imposed segregation in the United States. Harlan condemned mandated segregation as "inconsistent not only with that equality of rights which pertains to citizenship, but with the personal liberty enjoyed by everyone in the United States....The destinies of the races in this country are indissolubly linked together, and the common government of all shall not permit the seeds of race hate to be placed under the sanction of law."

Apartheid in South Africa is totally inconsistent with the ideals proclaimed by Justice Harlan. It is a system of law that separates people on the basis of color, strips members of one race of their basic human rights, robs them of their citizenship, denies them economic opportunity, and imposes these indignities through criminal law and police action. Because of its flagrant injustices, apartheid is universally condemned in the United States. Its cruelty and repression provoke instability that threatens America's long-term interests in the region. Its pervasive racial discrimination evokes a painful reminder of our own history and spurs us to make common cause with the oppressed.

During the past twelve years, Harvard has sought to play a positive role as an investor in U.S. companies doing a small amount of business in South Africa.* We have voted against new South African investments in companies in which we hold stock, and we have taken pains to vote in an informed, responsible manner on other shareholder resolutions. In addition, we have gone beyond voting to conduct an active dialogue with such firms to persuade them to improve working conditions for nonwhite employees and to express opposition to influx control and other repressive apartheid laws. We have consistently opposed bank loans to the South African government or its subsidiary organizations. Each year, the University provides scholarships to enable nonwhite South Africans to study at Harvard. Finally, I have served since its inception as Chairman of the National Council of the South African Educational Program, under which more than 225 nonwhite South Africans are currently enrolled in American universities.

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*Harvard will not invest in companies doing a majority of their business in South Africa.

Recent events have led Americans to review our national policy toward South Africa and its system of apartheid. Over the last nine months more than 200 nonwhite South Africans have been killed by the police in demonstrations and public gatherings. More than 3,000 have been arrested, many of whom remain in jail under uncertain charges. An estimated one million nonwhites have taken part in labor strikes and school boycotts. The President of South Africa has banned all political meetings and assemblies by 29 opposition groups, including the United Democratic Front, an organization with 1.5 million members. This month the government will try 16 UDF leaders on charges of treason.

Against this backdrop, the current United States policy of quiet diplomacy, or "constructive engagement," with South Africa seems increasingly inadequate. Although the South African government has made statements that it intends to pursue change in its relations with the country's nonwhite majority, there is little evidence that such change is actually taking place. The limited integration that has occurred in athletics and public facilities--even the lifting of the ban on racial intermarriage--are but small steps that do not attack the basic evils of apartheid.

Blacks continue to have no political power. The separate South African parliament created for Indians and "coloreds" has no legislative authority. Its very creation underscores the disenfranchisement of the overwhelming black majority of the South African population and divides the country further along racial lines.

The "homelands" resettlement policy, temporarily suspended, has forced 3.5 million blacks to move to crowded Bantustans, where economic and living conditions are poor and the infant mortality rate is the highest in the African continent. As a corollary to the homelands policy, more than 8 million blacks have been "denationalized" and stripped of their South African citizenship. "Pass laws" which sharply limit freedom of movement for nonwhites are enforced with increasing efficiency: arrests for pass law violations doubled from 1980 to more than 200,000 annually in 1983. Finally, the influx control laws which bar nonwhite urban workers from residing with their families near the workplace are strictly enforced.

In sum, the Afrikaner government shows little evidence of moving to dismantle the system of apartheid. The fruits of constructive engagement are meager indeed while the suffering and repression continue undiminished. Beneath the surface of official intransigence, however, deeper trends in the society offer glimmers of hope. In particular, opinion polls of South African whites indicate far greater support for change than anything promoted recently by the regime. A survey released in December 1984 by the Human Services Research Council, an academic body established and partially funded by the South African government, revealed that 43 percent of white South Africans are now in favor of negotiations with the African National Congress while 44 percent are opposed.

Such trends suggest the opportunity for pressing the Afrikaner regime to take bolder steps toward reform. Yet the current United

States policy falls far short of what the urgency of the situation in South Africa demands. Worse yet, it is easily mistaken for tacit acquiescence in a status quo that offends our most precious ideals and threatens to deteriorate in growing violence and instability. Many Americans doubt the seriousness of our government's opposition to apartheid and believe that the Administration is more concerned to preserve the short-run advantages of alliance with a powerful regime than to alleviate the suffering and injustice of apartheid. If constructive engagement is not convincing to ourselves, it can hardly seem persuasive to Afrikaners.

In view of the severe injustices of apartheid and the risk of growing violence and unrest, I believe that quiet diplomacy by our government will not suffice. Circumstances require a more powerful expression of our national concern. I therefore support legislative sanctions. At the same time, I recognize how difficult it is to predict with certainty the economic and political impact on South Africa of any particular policy or course of action by the United States.

There are currently two schools of thought about how the United States can most effectively oppose apartheid. The first is based on the premise that U.S. investments in South Africa can provide a substantial means of influencing the South African regime. Direct U.S. investments represent nearly 20 percent of all direct foreign investment in South Africa; they total more than $2 billion in approximately 280 U.S firms, including 57 of the 100 largest U.S.

corporations. When the value of U.S. held shares in South African companies is included, the total amount of U.S. investments is much higher with some estimates going as high as $14 billion.

Through active participation in the South African economy, it is said that U.S. companies can help bring about change through their own industrial practices and their vigorous opposition to apartheid rules. To the adherents of this position, the Sullivan principles represent an important means of enlisting and focusing the activities of U.S. investors in South Africa. Expansion of these principles among U.S. companies is regarded as a way of improving the wages and working and living conditions of nonwhite South Africans, transferring technical and management skills to nonwhites, and creating economic and political pressures for reform. From this point of view, the proper role of the U.S. government is to complement the activities of U.S. investors by seeking to persuade the South African regime to begin to dismantle the apartheid system in order to foster continued domestic and economic growth and better international relations.

The second school of thought acknowledges that U.S. investment can influence South Africa, but reaches a wholly different conclusion, calling for total and complete disinvestment. Proponents of this point of view believe that apartheid is so entrenched and the South African regime so intransigent that only a major shock to the entire system will have any effect. According to the theory, such a shock can be administered by the United States if it withdraws all its investments from South Africa. From this perspective current U.S.

investments are seen as bolstering apartheid, not encouraging reform, and the Sullivan principles are dismissed as a token effort to justify continuing to do business. Sophisticated advocates of disinvestment do not rest their case on the economic impact of withdrawal, which they concede is difficult to predict, but argue that the initial shock to the South African economy and the dramatic demonstration of political and moral condemnation by the United States would force the South African regime to change.

There are great uncertainties in both of these points of view. Supporters of investment can offer only a speculative hope that the employment practices and social welfare programs of companies employing such a small fraction of the nonwhite work force in South Africa will help bring about the end of apartheid. Proponents of disinvestment cannot convincingly dispel the fear that the departure of American firms would merely lead either to black unemployment and government repression or to a transfer of the abandoned assets to other owners who might well be less humane and progressive than their predecessors.

While no course of action can be free from uncertainty, sanctions of the kind proposed in the Anti-Apartheid Act seem to offer a way of capturing most of the strengths of both opposing points of view while minimizing their disadvantages. By imposing several significant economic sanctions against the South African government, the bill goes well beyond mere verbal disapproval of apartheid. No one familiar with this legislation can construe it as tacit support for the

Afrikaner regime. No one can interpret the Act as anything other than a strong moral condemnation of apartheid pronounced by the chosen representatives of the American people.

At the same time, unlike total divestment, the Anti-Apartheid Act imposes sanctions directly on the South African government. It does not threaten to harm blacks and other blameless third parties by depriving them of jobs. Nor does the bill diminish the opportunity for American companies to play a constructive role by opposing influx control laws and providing better working conditions and other opportunities for their black employees. True, the legislation would bar new investment by American companies. Still, it is inconceivable that U.S. firms will ever control enough of the South African economy to change the economic system by themselves. They can have a positive impact only by setting an example for others to follow, and this they can do well enough without expanding their investment beyond existing levels.

In sum, unlike the more extreme alternatives, the Anti-Apartheid Act does not rely predominantly on either the carrot or the stick to achieve reform. It uses both--and in a way that imposes the least possible burden on the innocent bystander. By providing for the use of positive and negative incentives, the approach taken under the Act offers greater hope than any of the known alternatives for encouraging a process of constructive reform that will help to do away with apartheid. In following this course, we stand the best chance of advancing the humane ideals that are central to our national creed and sending a message of support to nonwhite South Africans struggling to be free.

Senator HEINZ. Mr. Bok, thank you very much.
Mr. Schotland.

STATEMENT OF ROY SCHOTLAND, GEORGETOWN LAW SCHOOL, GEORGETOWN UNIVERSITY

Mr. SCHOTLAND. Thank you, Mr. Chairman.

It's a special privilege to be back before the Banking Committee. Each of you Senators and probably each person in this room has thought a great deal about these issues and I bet that many people here believe there's a clear and simple right answer. I submit this is an example of H.L. Mencken's proposition that for every complex problem there is a clear, simple, and wrong answer.

ISSUE OF DIVESTITURE IS COMPLEX

My key point today is that the issue of divestiture is not as clear and simple as many people have been making it sound. In my written statement I offer also five comments on the specific provisions of this bill, a bill which is described by its Senate supporters as if it were something of a lion or at least a leopard, but it seems to me to have about all the force of a plain old pussycat.

Before I deal briefly with divestment, may I give just two suggestions about the bill, one echoing a point just made by President Bok. The bar on loans to the South African Government and entities but nobody else in South Africa is curious. Bank loans from American banks to the South African Government were $350 million in September 1984, down from 1982's over $600 million, but our American bank loans to nonbank borrowers in South Africa totaled $1.1 billion as of September 1984, up from just under $500 million in 1981. Our bank loans to banks in South Africa in September 1984 totaled $3.5 billion, up from $1 billion as of 1981. When our banks lend to South African banks it isn't too hard to understand to whom the South African banks might lend in turn.

Contrary to the claims of the bill's supporters, I fear this bill sends a signal that we are not serious and we are not willing to pay any significant price for our principles.

Only one other point, if I may, about the bill itself. Why does the bill not mandate the Sullivan principles for U.S. companies in South Africa as does the Lugar-Mathias-Dole bill? The Rockefeller Commission report of 1981 chaired by Franklin Thomas of the Ford Foundation, the fullest study ever done on these issues, endorsed the principles. The National Association of State Treasurers has formally endorsed the principles. You're going to hear a panel saying, I believe completely correctly, how constructive the principles are.

Law in Connecticut, Nebraska, New York City, and elsewhere has formally recognized their significance.

Chester Crocker testified before the Foreign Relations Committee 3 weeks ago that the principles would be difficult to apply and monitor. I submit that is a false hurdle.

Since 1978, Arthur D. Little, as Reid Weedon will testify in a few moments, has formally evaluated compliance with the principles and I think anybody who looks at the evaluation process will be impressed with how substantive and substantial it is.

I don't see how the administration can justify rejection of Lugar-Mathias-Dole, and I believe that step is more effective than S. 635 as now written, so may I urge consideration of amending S. 635 to incorporate that step and perhaps others.

My key point today, pursuant to requests, is about the issue of divestment. Any serious consideration of divestment involves three questions.

First, the facts—three kinds of facts have got to be gotten out. What kind of divestment is proposed; is it absolute or is it selective in any way? For what kinds of funds is it proposed? It's vastly different if, as Maryland has done, there is a bar on the cash funds in banks involved with South Africa, in contrast with Massachusetts' law on any securities in the pension funds. And last, what size funds; the larger the fund, the greater the problem.

The second key question is, whether the kind of divestment proposed will be effective or is this being done regardless of effectiveness?

The third question is, is the kind of divestment proposed moral?

By starting with the facts, we see at once that the issue is not completely simple and that much of the advocacy of divestment misrepresents the facts and so starts out in questionable morality.

Most advocacy is for absolute divestment. This has been adopted, for example, by Massachusetts and the District of Columbia pension funds. This is an issue in many States right now—Pennsylvania, Maryland, and the State of Washington, for example, specifically.

That is deeply different from the approach adopted by Connecticut, or Maryland, or Nebraska, or New York City. Although divestment advocates always list them as examples of what they want, Connecticut, Maryland, Nebraska, and New York City have rejected absolute divestment.

Absolute divestment, I submit, is immoral, as I will explain in one second; ineffective; and for institutional investors such as endowments or pension funds seriously expensive and injurious.

Absolute divestment is immoral for two reasons. First, it treats every American firm involved in South Africa the same, regardless of their conduct there. Kelloggs was the first company, not just the first American company, to recognize and bargain with a black union. Ford was the first company, not just American company, to have black shop stewards. Control Data is conducting a major program of education in modern skills. Are those companies the same as Martin-Marietta which refuses (as far as the latest information I have) even to sign the Sullivan principles; or Baker International, a major oil-drilling company, which will not even respond to major shareholders' requests for information on its conduct there?

To brand different people the same because of one characteristic is the very essence of prejudice and is the main reason why absolute divestment is simply immoral, contrary to representations.

The speaker of the New Jersey Assembly says that when he hears talk about selective divestment along the Sullivan principles lines, he thinks of the legend over the entry to the Nazi concentration camps. That is, he thinks the Sullivan principles are false. The legend—I don't speak German well enough—was "Work will set you free."

I can only think of that kind of lumping this way. If he were asked were Eichmann and Ike any different, they both were involved in killing in World War II, I don't know what he would say. And I think the Sullivan principles are that different and that constructive.

ADVOCACY IS HYPOCRITICAL

A second reason absolute divestment is immoral is that the advocacy is hypocritical. It demands the university endowment or State pension fund to be free of all connection with South Africa, but I have yet to find any advocate who imposes any similar demand on himself. Absolute divestment is an understandable tactic in a political effort, but it is nothing more. It is understandable to brand immoral the university or the pension fund holding shares in any company, but is it moral to go on using American and Japanese cars, using IBM products, drinking Coca-Cola, relying on medicines—well, you can name just about any American drug company. And how many individuals who sit demanding purity of institutional investors look down at their gold watch and see whether the time has come for them to move on to something else?

It's unrealistic to expect people to function without such firms, without Otis Elevator, Associated Press, ABC, CBS, New York Times, Washington Post. It is no less unrealistic to expect institutional investors to function to carry out their mission of education of providing secure pensions without the opportunity to invest in such major natural holdings for such portfolios.

That is why an Oregon court in December this past winter held it imprudent for the $20 million University of Oregon endowment to adopt absolute divestment.

One other immorality is involved in most advocacy of absolute divestment. This is misrepresentation about how much has been adopted. Connecticut has not done what the advocates claim. It retains and invests more in companies that are Sullivan signatories in the top compliance ratings. That prudent course has been approved by the National Association of State Treasurers. It makes moral decisions. It avoids imposing expensive, useless losses on the funds.

New York City, contrary to the usual advocacy, has not adopted absolute divestment, not even at the end of its 5-year phase-in. Nebraska, ditto. Maryland has done nothing about its investment funds, barring merely use of banks involved in South Africa.

As for why divestment is ineffective, what happens if our university, or the University of Pennsylvania, or the State of Massachusetts pension fund sells stock in a company? The company doesn't like the publicity, but some other shareholder who by definition cares less simply buys the stock. There is less impact on the company than if Harvard, or the University of Pennsylvania, or the Massachusetts pension fund is on the back of that company as active shareholders.

When Connecticut passed its selective divestment law, within 2 weeks the major employer in Connecticut, United Technologies, made its largest acquisition in South Africa of a subsidiary. Polaroid did pull out of South Africa because their product was unique.

Their product was the key to the pass system years back when nobody else had that kind of film. Their pullout had absolutely no impact. Polaroid film simply came in through Italy.

If our companies pull out of South Africa, business done by them will be picked up by others. Our computer companies have the largest part of any South African economic activity, 70 percent. Nobody can question what's going to happen if the computer companies pull out. The other 30 percent simply pick up the vacuum.

We need to put the multinationals together along lines proposed, for example, by Congressman Solarz.

Although divestment will be completely ineffective, it is costly. In an article in a pamphlet recently published and now out in 30,000 copies in which I submit my article for your record, I go in detail into the impact on institutional investors and into the accomplishments of the Sullivan signatories and if I may——

Senator HEINZ. Without objection, that will be made part of the record.

Mr. SCHOTLAND. Thank you very much, Mr. Chairman, and thank you for your consideration.

[The complete prepared statement and a pamphlet on disinvestment follow:]

Senate Committee on Banking,
Housing & Urban Affairs:

May 24, 1985

Subcommittee on International
Finance

Testimony of Roy A. Schotland, Professor,
Georgetown U. Law Center

on

The Anti-Apartheid Act of 1985, S.635

Summary and Contents:		Page
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* * * * * *

This statement focuses on S. 635, with five brief comments on the divergence between what the bill does and the claims made about it.

In addition, as requested, I submit views on the much discussed question of divestment. Here I only summarize my views; they are set forth at length in a recently published pamphlet ("Disinvestment--Is it legal? Moral? Productive?", Nat'l. Legal Center for the Public Interest, Wash. D.C., 1985), and I request that a copy of my article be included in your Hearing record with this statement.

Below is the outline of that article, followed by my summary for your Hearing:

Context ....
The difficulties of divergent investing ....
Hurdle 1: What goals? ....
Hurdle 2: Which priorities? ....
Hurdle 3: Who decides? ....

Hurdle 4: How decide? ....
Hurdle 5: The lack of information on the divergent goals ...
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Hurdle 7: How hold the fiduciaries accountable? ....
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Two case studies ....
A. State and local pension funds and recent pressures for in-state mortgage investing ....
B. South Africa-involved investments ....
  1. Factual context ....
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  Cost 1: Divestment shrinks the investment spectrum ....
  Cost 2: Less information is available on the remaining stocks ....
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  Cost 5: Smaller stocks have less liquidity ....
  Cost 6: Managing the portfolio will cost more ....
  Cost 7: How hold the fiduciaries accountable? ....
C. The Sullivan Principles ....
D. The morality of divestment ....
E. A postscript on the constitutionality of divestment ......
A word on foundations, churches and charities and endowments ....
Conclusion ....

I. To summarize my views on divestment:

Views of divestment must begin with what divestment is proposed. Most advocacy is for absolute avoidance of the securities of any firm involved in South Africa, as has been adopted for the pension funds of Massachusetts and the District of Columbia (and no other state). That is very different from the approach adopted by, e.g., Connecticut or Maryland or Nebraska, although divestment advocates always list them as examples of what they want.

Absolute or blunderbuss divestment is, contrary to first impressions, immoral, ineffective, and for institutional investors, injuriously expensive.

Absolute divestment is immoral for two reasons. First, it treats all American firms involved in South Africa the same, regardless of their conduct there. Kellogg's was the first company--not just the first U.S. company--to recognize and bargain with a black union. Ford was the first company with black shop stewards. Control Data is conducting a major program of education in modern skills. Are such companies the same as Martin Marietta, which refuses to sign the Sullivan Principles, or Baker International (oil drilling), which will not even respond to major shareholders' requests for information on its conduct in South Africa?

To brand different people the same because of one characteristic, is the essence of prejudice, and is the main reason that absolute divestment is immoral.

A secondary reason that absolute divestment is immoral is that its advocacy is hypocritical: it demands that a university endowment or state pension fund must be free of all connection with South Africa--but I have yet to learn of any advocate who imposes any similar demand on himself. It is understandable tactics, but nothing more, to brand "immoral" the endowment or pension fund holding shares in any company involved in South Africa, while the advocates themselves go on using American or Japanese cars, using IBM and GE products, drinking Coca-Cola--or relying on medicine from Abbott Labs, Baxter Travenol, Bristol-Myers, Johnson & Johnson, Eli Lilly, Merck, Pfizer, Richardson-Vicks, Schering Plough, SmithKline Beckman, Squibb, Sterling, Upjohn and Warner-Lambert. (And how many individuals who demand "purity" of institutional investors, are willing to give up their gold watches or jewelry or family diamonds?)

It is unrealistic to expect people to function without such firms, or without Otis Elevator, Associated Press, ABC, CBS, New York Times and Washington Post. It is just as unrealistic to expect institutional investors to function (to carry out their mission of education or of providing secure pensions, etc.) without the opportunity to invest in such major natural holdings for such portfolios. Individual investors can easily restrict themselves, but investors are very different. That is why an Oregon court in December 1984 held it imprudent for the $20 million state university endowment to adopt absolute divestment.

One other immorality is involved in most advocacy of absolute divestment. This is the misrepresentation about how widely it has been adopted. Connecticut has not done what the advocates claim: it retains and will invest more in companies that are Sullivan signatories and in the top compliance ratings. That prudent course, approved by resolution of the National Association of State Treasurers, has the advantages of making moral distinctions, thereby being more effective and also inflicting little if any investment injury on its pension funds. Similarly, New York City, contrary to the usual advocacy, has not adopted absolute divestment, not even at the end of its five-year phase-in of selective divestment. Nebraska has also adopted selective divestment; and Maryland has done nothing about its investment funds, merely barring use of banks involved with South Africa.

As for why divestment is ineffective, and why it will be so injurious to institutional investors, full detail is set forth in the article submitted with this statement.

II. Five Comments on Specific Provisions of S. 635

1./ This bill is dramatically different from, and less than, what one would expect in light of the sponsors' statements introducing the bill on March 7 (see Congressional Record pp. S.2794-7). Sen. Kennedy said the bill "is intended to send a clear signal" and that "we cannot continue policies that actually encourage Americans to invest in racism." Sen. Weicker said that "Up to this point [we have] adopted a cost-free approach . . . . [T]he proof of our sincerity and our resolve is that we are willing to pay a price for the protection of universal ideals . . . ." Sen. Proxmire said the bill will "send a strong signal."

Indeed, this bill has been characterized as "probably the strongest bill" (Ottaway, Apartheid Opponents Launch Fresh Campaign, Washington Post, May 15, 1985, p. A3).

Only Sen. Levin pointed out matters that must be considered in considering this bill: 1) The 1981-3 State Department authorization of $28 million worth of military equipment sold to South Africa, the highest-level sales on record. 2) Seven nuclear-related exports to South Africa in 1981-2, which made it our third largest nuclear export recipient; and in 1983 the Department of Energy licensing of U.S. firms' servicing the Koeberg reactor in South Africa. 3) The 1982 export license granted for sale of 2,500 electric cattle prods or "shock batons" for crowd control by South African police.

The bill fails to touch any such matters.

2./ The bill ignores imports from South Africa. America's purchase of South African minerals may well do more to support the status quo in South Africa than any other economic relationship, and perhaps we need to or should continue such purchase. But certainly we must be more realistic about what "signal" we are sending to South Africa, and about what price we are willing to pay for our principles.

3./ The bill bars loans to the South African government and government entities, but not to others in South Africa. American banks loaned only $343 million to Africa's public sector as of September 1984, down from $623 million in 1982. But our banks' loans to non-bank private borrowers in South Africa totalled $1.1 billion as of September 1984, up from $495 million in 1981; and our banks' loans to banks in South Africa, who of course loan the money on to others, totalled $3.5 billion as of September 1984, up from $1.08 billion in 1981. (NY Times, Apr. 29, 1985, p. D-8)

Here again, doesn't the bill send a signal that we are not serious and are not willing to pay any significant price for our principles?

4./ The bill bars new investments but has an exception for "an investment which consists of earnings derived from a business enterprise in South Africa established before the date of the enactment of this Act and which is made in that business enterprise," § 4(b)(1).

That exception allows investment for expansion, contrary to the explicit recommendation of the most significant work on these matters, the Rockefeller Foundation Study Commission on U.S. Policy Toward Southern Africa (1981), chaired by Franklin A. Thomas. And many American firms in South Africa already go beyond this bill, by barring expansion there--e.g., General Motors, Kodak, Burroughs and Gulf & Western. (See the Study Commission's Report, "South Africa: Time Running Out," at pp. 427-8.)

In short, if S.635 is meant to send a signal not merely to Americans who are concerned about apartheid but uninformed about relevant facts, but also a signal to South Africa's government; and if the bill is meant not only to send signals but also to have impacts, then there is need to consider amendments along lines suggested by the above and Senator Levin's approach.

5./ Why does the bill not mandate the Sullivan Principles for U.S. companies in South Africa, as does the bill sponsored by Sens. Lugar, Mathias and Dole? The Rockefeller Commission (see above) endorsed the Principles. The National Association of State Treasurers has formally endorsed them. Law in Connecticut, Nebraska, New York City and elsewhere, has formally recognized their significance.

Chester Crocker, Assistant Secretary of State for Africa, reportedly testified before the Foreign Relations Committee May 2 that the Principles would be difficult to apply and monitor. That is a false hurdle. Since 1978, Arthur D. Little has formally evaluated complicance with the Principles, steadily improving its process. Last year, the questionnaire to each company (or even each separate subsidiary) was 55 pages, and the closeness, care and reliability of the evaluation process will impress anyone who looks into it.

Unable to see how the Administration can justify its rejection of the Lugar-Mathias-Dole step, and believing that step to be more effective than S. 635 as now written, I urge amendment to add that step to S. 635, as well as urging consideration of the other provisions of the Lugar-Mathias-Dole bill.

* * * * * * * *

Thank you for your consideration.

National
Legal Center
for the Public Interest

DISINVESTMENT

Is it Legal?
Is it Moral?
Is it Productive?

AN ANALYSIS OF POLITICIZING INVESTMENT DECISIONS

by
JOHN H. LANGBEIN, Ph.D., LL.B.
ROY A. SCHOTLAND, LL.B.
and
ALBERT P. BLAUSTEIN, J.D.

Special Commentaries
by
WILLIAM G. MILLIKEN
Former Governor of Michigan
and
DEREK C. BOK
President of Harvard University

Introduction
by
THEODORE B. OLSON
Former Assistant U.S. Attorney General

PREFACE

ERNEST B. HUETER
PRESIDENT

This study, another in the Judicial Series of monographs published by the National Legal Center for the Public Interest, brings focus upon the many ramifications of a serious national and international issue: the politicizing of investment policy. Currently much attention is centered by the media and special interest groups upon South Africa and the social issue of apartheid. However, the issue of disinvestment of American corporate securities as a means of forcing social or political change is a concept that extends far beyond a single country or a single political objective.

It is well that our policy-makers and their constituents—the American citizenry—be keenly aware of the many considerations raised by legislation requiring trustees of public pension and endowment funds to divest securities of corporations doing business in a particular geographical area or in a prescribed field.

In keeping with its mission, the National Legal Center concentrates its interests on the legal and Constitutional considerations of issues of national importance. The scholarly evaluations of law professors Langbein, Schotland, and Blaustein address disinvestment from those aspects. This study is further enhanced by contributions from former Governor William G. Milliken of Michigan, President Derek Bok of Harvard, and former Assistant U.S. Attorney General, Theodore B. Olson; each addressing disinvestment from a different perspective.

This publication is provided by the National Legal Center as a public service. It is not intended to advance or inhibit the passage of any legislation before any governmental entity.

NATIONAL LEGAL CENTER
FOR THE PUBLIC INTEREST
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ABOUT THE AUTHORS

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JOHN H. LANGBEIN is the Max Pam Professor of American and Foreign Law at the University of Chicago Law School where he has taught since 1971. He is a 1968 *magna cum laude* graduate of the Harvard Law School where he served as articles editor of the Law Review. Langbein received a Ph.D. from Cambridge University, England, in 1971. He is a member of the Bar in the District of Columbia and Florida and he is a barrister of the Inner Temple in London. He is the author of three books, one on the subject of his doctoral thesis, criminal process in the Renaissance, and numerous law review articles. Professor Langbein's principal areas of legal scholarship are pension law, modern German law, legal history and the law of trusts, investment and probate. On the last subject he is the author, along with Richard Posner, of a definitive article on "Social Investing and the Law of Trusts" published in Volume 79 of the Michigan Law Review (1980).

ROY A. SCHOTLAND has been a Professor of Law at Georgetown University Law School since 1972. Educated at Columbia College and Wadham College, Oxford, England, he is a graduate of Harvard Law School where he received his LL.B. in 1960 and was a member of the board of editors of the Law Review. Upon graduation from Harvard, Schotland served as a research assistant to the law school's Professor Paul Fruend (1960-61) and as a Law Clerk to Justice William Brennan, Jr. of the U.S. Supreme Court (1961-62). Associated in a teaching capacity with law schools for twenty years, Professor Schotland has conducted classes at the University of Virginia and Pennsylvania Law Schools as well as at Georgetown University. One of his areas of scholarship and expertise is the management of pension funds. He has written extensively and has given numerous talks on the subject and currently conducts a seminar at Georgetown University on pension regulation.

ALBERT P. BLAUSTEIN is a Constitutional authority of truly world-wide renown. A professor of law at Rutgers University, he has worked as a consultant in the preparation of the constitutions of several foreign nations including Liberia, Zimbabwe, Peru and Bangladesh. He has been designated as Constitutional Advisor to the Assembly of First Nations in preparing autonomy constitutions for Canada's Indian Nations. A graduate of Michigan and Columbia Universities, Blaustein began teaching at Rutgers in 1955. He is the President and Chairman of Human Rights Advocates International, Inc., and the Editor-in-Chief of "The Influence of the U.S. Constitution Abroad." He is the author of numerous articles, contributions and reviews and has written several books on Constitutional and human rights including: Civil Rights and the Black American (1970) and the multivolume text, Constitutions of the Countries of the World (1971); 19 volumes, continuously updated.

WILLIAM G. MILLIKEN retired in 1983 as Michigan's longest serving Governor. First elected Governor in 1970, Milliken, a Republican, was moved up to that office in 1969 after serving as Lieutenant Governor. He is a graduate of Yale University and is a recipient of numerous honorary degrees including honorary Doctor of Laws degrees from the University of Michigan and Yale. Governor Milliken's experience in politics is not limited to holding his state's highest office. He was elected to the State Senate in 1960 and 1962 and was Senate Majority Floor Leader in 1963. Presently he serves as a member of the Board of Directors of Chrysler Corporation, Burroughs Corporation, Ford Foundation in New York and is Chairman of The Center for the Great Lakes in Chicago. Prior to his political career, he was president of J.W. Milliken & Co., a chain of Michigan department stores.

DEREK C. BOK has been the President of Harvard University since 1971. Previously he was Dean of Harvard Law School, a post he assumed in 1968. He has also been a Professor of Law at Harvard since 1961. Bok received his undergraduate degree from Stanford University in 1951 and his J.D. from Harvard Law School three years later. He was a Fulbright Scholar at the University of Paris' Institute of Political Science from 1954 to 1955. President Bok has had numerous professional affiliations including membership on the Federal Advisory Committee on Affirmative Action at Institutions of Higher Education and the Board of Advisors of the National Endowment for the Humanities. He is the author of a book, Beyond the Ivory Tower: Social Responsibilities of the Modern University, published by Harvard University Press in 1982.

ROBERT J. D'AGOSTINO, NLCPI's Legal Advisor, is a business law practioner who, in 1981-82, served in the U.S. Department of Justice as Deputy Assistant Attorney General for Civil Rights. He had policy authority over the entire division and frequently spoke for the Department of Justice on civil rights issues. Prior to his government service, and immediately thereafter, D'Agostino was a Professor of Law at Delaware Law School where he was the founding faculty advisor to the "Delaware Journal of Corporate Law" and taught courses in commercial transactions, bankruptcy, and contemporary business law problems. From 1973 to 1975, D'Agostino was a managing editor for Matthew Bender and Co. and was the first head of the publishing company's in-house bankruptcy division. D'Agostino is the author of several articles and books dealing with bankruptcy and civil rights. He is a contributing author to the leading bankruptcy treatise, Collier on Bankruptcy.

INTRODUCTION

by

THEODORE B. OLSON*
Former Assistant U.S. Attorney General
Office of Legal Counsel
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The past decade has seen the rise of a political phenomenon that raises questions lying squarely at the crossroads of private and public, domestic and international law. Numerous state and local governments have chosen to express their political disapproval of the domestic policies of foreign governments by divesting their holdings in American companies that do business with those governments or operate branches or subsidiaries in their territories. In the main, these state and local decisions have targeted the government of South Africa with its system of *apartheid*. As of this writing, five states, Connecticut, Maryland, Massachusetts, Michigan, and Nebraska, have passed laws regarding divestment of South African holdings; about fifteen municipalities, including Boston, New York, Philadelphia, and Washington, D.C., have enacted similar divestment ordinances or adopted disinvestment policies, with officials in Chicago, Detroit, Los Angeles, and Seattle apparently contemplating comparable moves.[1]

Such local government decisions provoke fascinating legal questions that arise in ordinarily unrelated fields of private and public law. When trustees of state or local government funds divest holdings for avowedly political, rather than economic, reasons, do they act consistently with the standards of care imposed upon fiduciaries by the law of private and charitable trusts, corporate law, and local government law? If state and municipalities divest or disinvest in order to send foreign governments a political message, do their decisions constitute "speech" protected by the First Amendment of the United States Constitution?[2] If so, what of the First Amendment rights if the individual taxpayers who disagree with their government's "message," but must nevertheless help to pay for it?[3]

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[1] *See* Campbell, *More Municipalities Joining Drive to Cut South Africa Links*, N.Y. Times, Sept. 25, 1984, at A1, Col. 6 and A25, Col. 1.

[2] *Cf.* M. Yudof, When Government Speaks: Politics, Law and Government Expression in America (1983); Shiffrin, *Government Speech*, 27 U.C.L.A. L. Rev. 565 (1980); Note, *The Constitutionality of Municipal Advocacy in Statewide Referendum Campaigns*, 93 Harv. L. Rev. 535 (1980).

[3] *See* Shiffrin,*supra* note 2, ar 588-95; Note, *supra* note 2, at 549-53.

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*Mr. Olson, a member of the California and District of Columbia Bars, is an attorney in private practice in Washington, D.C. From 1981 to 1984, he served as the Assistant Attorney General, Office of Legal Counsel, Department of Justice. The views expressed here are his own.

Even more tantalizing questions arise when one considers the federalism issues raised by such local government decisions. On the one hand, it could be argued that such state and local regulations, on their face or as applied, impermissibly burden foreign commerce[4] or violate the Supremacy Clause of the Constitution.[5] On the other hand, it could be asserted that recent Supreme Court precedent suggest that states and localities who choose to invest in businesses operating in particular foreign countries do not offend the Comerce Clause because in doing so, they act as "market participants," not as "market regulators."[6] Alternatively, it could be argued that the federal government may not interfere in the manner in which a state or local government chooses to invest its own funds, since such choices constitute "essential decisions regarding the conduct of integral government functions" which the Tenth Amendment to the Constitution insulates from federal regulation.[7]

Yet another level of legal complexity is introduced when one recognizes that customary international law, as reflected in international conventions and treaties, advisory opinions of the International Court of Justice, and writings of international publicists, has come to view systematic racial discrimination as a crime of universal concern against all humanity.[8] Leaving aside the unanswered question whether *congressional* legislation that purported "extraterritorially" to punish such conduct would be consistent with principles of international law,[9] it could be argued that state or local legislation that seeks to achieve the same goal would be preempted by

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[4] The Commerce Clause grants Congress, not state or municipal legislatures, the exclusive power "[t]o regulate Commerce with foreign Nations." U.S. Const. art. I, S 8, cl. 3.

[5] *See* U.S. Const. art. VI, cl. 2. *See also* Chettle, *The Law and Policy of Divestment of South African Stock*, 15 L. & Pol'y in Int'l Bus. 445, 515-26 (1983) (making this argument).

[6] *See, e.g., White* v. *Mass. Council of Constr. Employers*, 103 S.ct. 1042, 1044 (1983); *Reeves* v. *Stake, Inc*. 447 U.S. 429, 436-37 (1980); *Hughes* v. *Alexandria Scrap Corp.*, 426 U.S. 794, 810 (1976).

[7] *National League of Cities* v. *Usery*, 426 U.S. 833, 855 (1976). *But see Garcia* v. *San Antonio Metro. Transit Auth.*, 104 S.Ct. 3582 (1984) (setting case for reargument and directing parties to address the question whether the Tenth Amendment principles set forth in *National League of Cities* should be reconsidered).

[8] *See, e.g.*, International Convention on the Suppression and Punishment of Crime of *Apartheid*, *adopted* November 30, 1973, *entered into force*, July 18, 1976, Annex to G.A. Res. 3068 (XXVIII), 28 U.N. GAOR, Supp. (No. 30), 166 U.N. Doc. A/9030 (1974); International Convesntion on the Elimination of All Forms of Racial Discrimination, *adopted* Dec. 21, 1965, *entered into force*, Jan. 4, 1969, 660 U.N.T.S. 195; *Case Concerning Legal Consequences for States of the Continued Presence of South Africa in Nambia (South West Africa) notwithstanding* Opinion); *Restatement (Revised), Foreign Relations Law of the United States*,
Tent. Draft. No. 2, S 404, Reporters' Note 1 at 117 (1982); *id.* Tent. Draft No. 3, S 702(f) (1982) ["Revised Restatement"].

[9] Two unsuccessful bills introduced in the 98th Congress sought to exercise Congress' legislative powers extraterritorially to require United States persons conducting business or controliing enterprises in South Africa and Northern Ireland to comply with certain fair employment standards, as well as to prohibit new loans by United States financial institutions to the South African government and its owned or controlled corporations. *See* H.R. 1693, 98th Cong., 1st Sess. (1983) (the "Solarz-Gray Amendments" to the Export Administration Act); H.R. 3465, 98th Con., 1st Sess. (1983) (Northern Ireland).

Article I, S 8, cl. 10 of the Constitution, which empowers Congress to enact legislation to "define and punish Offences against the law of Nations."[10] Or, one could argue that, regardless whether such state and local legislation would interfere with any legislative power specifically enumerated in Article I of the Constitution, such laws inevitably would interfere with either the President's foreign affairs power or Congress' unenumerated foreign relations authority, or both, thereby creating an unconstitutional "intrusion by the State into the field of foreign affairs which the Constitution entrusts to the President and the Congress."[11]

The complexity and rich diversity of the potential legal and political issues expands geometrically when extended to other nations and other controversial social relationships. For example, what of state and local efforts to reach religious discrimination in Northern Ireland, the Middle East, India or the Soviet Union? How far may state and local government go in refusing to do business with citizens who wish to travel to Cuba, Libya, Afganistan or Nicaragua? May a state withhold contracts from persons who invest in or send funds to Poland or Iran? The potential list is endless. An exhaustive analysis of all of these legal questions could easily fill an entire law review symposium. The articles contained in this provocative monograph begin the task by coming to grips with some of the most difficult of these legal questions. Professor John Langbein of the University of Chicago Law School addresses what he calls the "Unprincipled, Futile, and Illegal," aspects considering whether a state or local government's forced disinvestment for political reasons—a phenomenon he dubs "social investing"—is contrary to established principles of private trust law or its statutory counterparts. Professor Roy Schotland of Georgetown Law School attacks the problem from a different perspective, reviewing the legal issues that arise when states and localities engage in what he calls "divergent investing". He includes a discussion of the "Sullivan Principles."[12]

Professor Albert Blaustein emphasizes the Constitutional implications of a private and state government divestment strategy. President Derek Bok of Harvard and former Governor William Milliken of Michigan address troubling issues they themselves have had to face and deal with some of the consequences of a pressure group mandated divestment policy.

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[10] *See* Revised Restatement, *supra* note 8, Tent. Draft No. 2, S 404, Reporters' Note 1 at 117 (noting that the question has never been adjudicated, but suggesting that the states of the United States are probably preempted from enacting legislation to punish offences against the law of nations).

[11] *Zschernig* v. *Miller*, 389 U.S. 429, 432 (1968). *See also United States* v. *Curtiss-Wright Export Co.*, 299 U.S. 304, 320 (1936) (describing President's power "in the field of international relations" as "plenary and exclusive"); *Perez* v. *Brownell*, 356 U.S. 44, 57-60 (1958) (recognizing that Congress also has implicit constitutional authority to regular matters affecting the foreign relations of the United States).

[12] About one-third of the American companies doing business in South Africa have adhered to the "Sullivan Principles," a statement of six principles of corporate conduct formulated in the mid-1970s by human rights activist Reverend Leon Sullivan in order to guide the employee-relations practices of multinational enterprises operating in South Africa *See* generally Sullivan, *Agents for Change: The Mobilization of Multinational Companies in South Africa*, 15 L. & Poi'y in Int'l Business 427 (1983).

Together, these articles provide a useful overview of a social phenomenon that has many legal facets. I commend the National Legal Center for the Public Interest for focusing attention and fostering dialogue on the legal and constitutional, as opposed to purely political, aspects of this perplexing and fascinating social phenomenon.

Washington, D.C.
November, 1984

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SOCIAL INVESTING OF PENSION FUNDS AND UNIVERSITY ENDOWMENTS: UNPRINCIPLED, FUTILE, AND ILLEGAL*

by

JOHN H. LANGBEIN**

Interest groups of various sorts have been campaigning in recent years to politicize the criteria that govern the investment of pension funds and university endowments. These funds should not, say the various campaigners, be invested in companies that do business in South Africa, or that have resisted labor union demands, or that manufacture munitions, or that pollute. Another strand of the social investing movement is localism; particularly as regards the pension funds of state and local government employees, there is pressure to invest for the purpose of stimulating the local economies.

This article is concerned to explain why the traditions of trust law, pension law, and the law of charity rightly forbid social investing. I shall direct primary attention to pension funds, whose enormous size and importance has made them the main target of the various social-investing pressure groups. In the final section of this paper (Part VII), however, I point to legal factors that make social investing objectionable for university and other charitable endowments.

I. UNDERSTANDING THE RISE OF PRIVATE PENSION FUNDS

At year-end 1983 the one thousand largest nonfederal pension plans in the United States had assets of $806 billion.[1] Total pension-fund assets exceed a trillion dollars.[2] These staggering sums reveal that a very large fraction of personal savings and of aggregate capital formation in the United States occurs through the medium of pension plans.

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[1] Pensions & Investments Age, Jan. 23, 1984, at 3.
[2] Id., Apr. 18, 1983, at 10.

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*Portions of this article, especially Parts VI and VII, are based upon material previously published in John H. Langbein & Richard A. Posner, Social Investing and the Law of Trusts, 79 Michigan Law Review 72 (1980). Posner subsequently became a federal appellate judge and has taken no part in the preparation of the present essay.

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Huge demographic shifts underlie this phenomenon. People are living longer, thanks to many factors, of which the twentieth-century revolution in health care (above all, the discovery and refinement of antibiotics) is the most important. In consequence, the gap between the time we cease to work and the time we die is widening. For that interval in our lives, we need a source of income other than current employment—we need what has come to be called "retirement income." In former times the retirement income gap tended for most people to be small or nonexistent, and transfers within the family tended to cover the gap. The elderly lived with their children and they did not live long. To the extent that private savings were insufficient, children were expected to help. But family structure has changed under the impact of urbanization, population mobility, and longevity. People have fewer children. Children leave their parents when they marry, and the elderly often find themselves living at great remove from their children. Furthermore, with increased longevity comes the problem of decrepitude in advanced old age. The increasing need for care of the elderly tends ever more to be met by specialized providers, both because of their expertise, and because the children of the elderly, especially when living in modern dual-wage-earner families, are ever less able to render such care at home.

As late as the early decades of the twentieth century neither government nor private industry seemed much concerned with the retirement income problem. Individuals were left to their own devices—private savings and intrafamilial arrangements. A few employers began to sponsor pension plans as early as the last quarter of the nineteenth century,[3] but the great movement to organize saving for retirement through employer-sponsored plans did not get underway until World War II and thereafter.[4]

The Great Depression struck at a time when many of the demographic changes that caused the retirement income problem were as yet recent. Many elderly people had not fully appreciated the implications of these changes; they had not (and perhaps could not have) made adequate provision through savings. The Social Security program was devised in the 1930s both to provide immediate relief to the destitute elderly of the day, and to guarantee retirement income to future retirees.

The defects of Social Security were long concealed, although they are now widely understood. Social Security is a transfer program rather than a savings plan. Present workers are taxed to pay retirement benefits to present retirees. Today's present workers pay taxes in the expectation that future workers will be taxed to pay benefits when the present workers retire. But because of changes in birth rates and longevity, the workforce is declining in proportion to the number of retirees. Accordingly, the burden of financing the transfers has grown enormously. The prospect looms that tomorrow's smaller cohort of workers cannot be taxed enough to pay comparable retirement benefits to today's workers. The sense that Social Security cannot play as large a part in the retirement income of future retirees as it does for those today is one of the most important factors in the explosive growth of the private pension system.

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[3] See, e.g., William C. Greenough & Francis P. King, Pension Plans and Public Policy (New York, 1976) 27ff; William Graebner, A History of Retirement: The Meaning and Function of an American Institution (New Haven, 1980).

[4] Alica H. Munnell, The Economics of Private Pensions (Washington, D.C. 1982) 10ff.

The experience with Social Security has also left us an important lesson about the dangers of exposing the retirement income system to the winds of electoral politics. Successive Congresses sweetened current benefits and eligibility requirements with scant regard to the implications for future retirees. Only the most recent financial crises within the Social Security system have slowed that process. Further, Social Security has had devastating effects upon the economy. There is strong evidence for the view that, by promising substantial future income flows without requiring either individuals or the state to save enough to fund those obligations, Social Security has played the key role in the worrisome decline in American savings rates and capital formation.[5]

Only against this background can we fully appreciate the importance of the private pension system. The retirement income problem will become ever more acute: there are more retirees and they are living longer. Ever larger income flows must be generated to support them. Meanwhile, the financial contradictions of Social Security have put it under a cloud from which it will never fully emerge. The long process of lowering popular expectations about Social Security is well underway. The future of the retirement income system lies, therefore, in the private sector.[6]

II. HOW PENSION FUNDS WORK[7]

The variety of pension plan types and features is large and complex. The details can baffle almost anyone, sometimes even the professionals (accountants, actuaries, lawyers, plan administrators) who specialize in the field. Fortunately, in order to understand the main issues in the social investing debate, it will suffice to describe only some basic distinctions and characteristics.

Funding. The great difference between a modern private pension plan and a transfer system such as Social Security is that private plans are funded. Savings are set aside regularly during the employee's working career. This money is invested, and the investment yield (often called the "build-up") accumulates along with the savings. When the employee retires, the fund is used to support him (and, under most plans, to support his spouse as well) until death.

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[5] See, e.g., Martin S. Feldstein, Social Security, Induced Retirement and Aggregate Capital Formation, 82 Journal of Political Economy 902 (1974).

[6] But see Dennis E. Logue, How Social Security May Undermine the Private Industrial Pension System, in Financing Social Security (Colin D. Campbell, ed.) (Washington, D.C. 1979) 265.

[7] See generally, Dan M. McGill, Fundamentals of Private Pensions, 5th ed., (Homewood, Ill., 1984).

Taxation. Federal tax policy has encouraged the private pension movement, especially since the 1940's. The employer is allowed to deduct his contributions to a qualified pension plan immediately, even though the employee does not actually receive the money until he retires.[8] Further, the build-up is exempt from taxation during the period of accumulation;[9] only when the employee begins to receive retirement income from the plan is he taxed on what he receives. Taxation is thereby postponed. Since most people find themselves in lower tax brackets when they retire (retirement income usually being somewhat less than employment income), postponement has the further effect of reducing the amount of taxes for most people.

The Protective Policy. These tax concessions reflect a consensus that has been endorsed repeatedly in tax and other federal pension legislation. The policy is protective. Private pension plans are encouraged for fear that people would not, acting individually, save enough to meet their retirement income needs. The tax concessions are meant to induce employers and employees to allocate a larger share of compensation away from current wages and into retirement savings.

The protective policy is manifested elsewhere in pension law, apart from the tax code. Federal law imposes a "spendthrift" provision on most pension funds, preventing an employee or his creditors from alienating (and thereby consuming) pension savings before he retires.[10] Likewise, federal law forbids the employee from waiving his right to have his pension fund invested prudently.[11] The protective policy has been, although not the only policy, surely the centerpiece of pension taxation and pension regulation. It will be seen that the protective policy bears importantly on the question of whether an employee has the power to endorse social-investing proposals that may impair his retirement income security.

The Trust Form. Pension funds typically take the form of a trust. The trust relationship is one of the most highly developed categories of the Anglo-American legal tradition. Thus, although the private pension fund is a relatively young phenomenon, it rests upon a familiar juridical basis.

Trust-investment law, now enforced by special pension legislation, supplies the rules that regulate the investment of pension assets; we shall see that this body of law takes the harshest view of investment activities that are not undertaken for the exclusive purpose of maximizing the economic well-being of trust beneficiaries.

Contributory or Not. Many plans are funded entirely from employer contributions. Because there is no deduction from the employee's pay-check, such plans are called "noncontributory"—the employee does not contribute. By contrast, "contributory" plans are those that require the employee to devote some fraction of gross pay—say, five percent—to the plan. Typically, the employer matches the employee's contribution according to some formula, for example, one-to-one or two-to-one.

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[8] Internal Revenue Code [hereafter cited as I.R.C.] sec. 404.

[9] I.R.C. sec. 402.

[10] I.R.C. sec. 401 (a)(13).

[11] Employee Retirement Income Security Act [hereafter cited as ERISA] secs. 404 (a)(1)(D), 409, 29 U.S.C. secs. 1104(a)(1)(D), 1109.

This distinction between plans to which the employee contributes and those to which he does not would seem to be important, but in economic terms it is not. Because even the employer-paid component of a pension plan is a cost of employment, it is best understood as a part of the wage packet, hence a form of involuntary savings whose true cost is borne by the employee. Both the employer-paid and the employee-paid contributions derive from what is—in economic terms—the employee's wages. Translating this point into traditional trust-law terms, we may say that the employee is in an important sense the "settlor" of his own pension trust.

Defined Contribution and Defined Benefit. Broadly speaking, there are two basic types of pension plans, defined contribution and defined benefit plans. A defined contribution plan is best analogized to a savings account. The plan calls for the establishment of a separate account for each employee. Contributions are credited to the account at a rate specified in the plan, and the account participates proportionately in the investment gains of the plan. When the employee retires, the size of his pension will depend entirely upon the size of his account. Ordinarily, the plan calls for the account to be annuitized and distributed over the remainder of his life (or, in the event of a joint annuity with his spouse, over the remainder of their two lives). The college and university teachers' plan, TIAA-CREF, is the best-known defined contribution plan. IRA and Keogh accounts work on the same principle.

A defined benefit plan, by contrast, is one in which the employer (or other plan sponsor) promises to pay a retirement benefit according to a plan formula—for example, sixty percent of average salary over the last five years of the employee's service. The employer makes regular contributions to the plan, in accord with acturarial projections of the sums needed to fund the promised pension levels.

Defined contribution and defined benefit plans allocate investment risk oppositely. Under a defined contribution plan, it is the individual employee who bears the burden of disappointing investment results or who enjoys the gains from exceptionally good results. Under a defined benefit plan, the employer bears the investment risk; since the employer has promised to provide benefits of a certain level, the employer remains liable to pay the benefits even if the fund turns up short.

Multiemployer Plans. Most pension plans are so-called "single-employer" plans—General Motors has a plan for its employees, IBM for its. In some industries, however, where employment patterns are episodic (the construction trades, entertainment, trucking, the needle trades, and a variety of others) individual companies do not sponsor pension plans. Rather, groups of employers sponsor a common plan, mostly in response to collective bargaining with a labor union. Although the Taft-Hartley Act requires equal numbers of management and union trustees on the board of such a plan,[12] in practice union interests tend to prevail, and these plans are often spoken of as union plans.

ERISA. Like most substantial fields of finance, pension plans have attracted government regulation. The federal tax concessions have been conditioned on various regulatory requirements since the 1940's. In 1974 Congress greatly extended the scope of federal regulation when it passed the Employee Retirement Income Security Act (ERISA). ERISA limits forfeiture of benefits under pension plans (through the so-called "vesting" rules); it imposes minimum eligibility and funding standards; it narrows the range of plan discretion in the design of benefit-accrual schemes; and it imposes fiduciary rules for the investment of plan assets.[13] Title IV of ERISA introduced a federal insurance scheme, ostensibly patterned on FDIC insurance for bank deposits, that guarantees most benefits under defined benefit plans against shortfall or default.[14] By making the federal government the pension paymaster of last resort, Title IV creates a further public interest in the financial soundness of the investment practices of private pension plans.

Compulsory Trusteeship. ERISA requires that pension plan assets be placed in trust,[15] and ERISA refines and codifies traditional trust-investment law for the pension field.[16] These provisions further the protective policy of pension law. Pension trustees are financial intermediaries who specialize in investing pension funds. Trusteeship removes investment decisions into the hands of professionals and prevents plan participants (most of whom are inexperienced in matters of high finance) from doing their own investing. Thus, while I am free to be foolish in investing my personal savings, my pension savings will necessarily be invested according to the professional standards of the investment industry.

Preemption. From the standpoint of the social-investing movement, one of ERISA's most important provisions is what lawyers call a preemption clause: ERISA expressly supersedes state law for most pension plans.[17] By federalizing pension law—including pension-investment law—in this way, ERISA has greatly narrowed the scope for social-investing initiatives beneath the level of federal law. If, for example, the Missouri legislature were to enact a social-investing measure requiring the pension plans of Missouri firms to invest their funds in Missouri mortgages, the courts would quickly invalidate the statute for violation of ERISA's preemption rule.

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[12] Labor Management Relations Act sec. 302(c)(5), 29 U.S.C. sec. 186 (c)(5).

[13] ERISA secs. 201 et seq., 301 et seq., 401 et seq., 29 U.S.C. secs. 1051 et seq., 1081 et seq., 1101 et seq.

[14] ERISA secs. 4001 et seq., 29 U.S.C. secs. 1301 et seq.

[15] ERISA sec. 403, 29 U.S.C. 1103

[16] ERISA secs. 404 et seq., 29 U.S.C. secs. 1104 et seq.

[17] ERISA sec. 514(a), 29 U.S.C. sec. 1144(a).

State and Local Plans. States, municipalities, school districts, and various other public bodies operate pension plans for their employees. These governmental plans are exempt from the requirements of ERISA,[18] which is a main reason why social-investing proposals have so often been directed at them. State and local plans differ from private plans and among themselves in matters of structure and governance. Often a state board, sometimes attached to the state treasurer, is responsible for those investment and administrative functions that would be performed by trustees for most private plans.[19]

Like Social Security, most state and local plans are run by bodies that possess taxing powers. As with Social Security, the temptation has been felt to leave future taxpayers to pay the retirement benefits for today's public workers, even though the entitlement to those benefits accrues presently and should be regarded as a cost of current employment. Thus, whereas Social Security is virtually entirely unfunded and is almost a pure transfer scheme, the state and local plans tend to be partially funded. There is some current saving and investment, but not enough to meet future obligations.

III. THE HIDDEN DYNAMIC IN SOCIAL INVESTING

The elderly are, as a group, neither affluent nor politically adventurous. Why, then, is the social investing movement aimed so resolutely at the pension funds that exist to support the elderly? Why do the proponents of social investing treat pension funds as being especially appropriate to bear the costs of an investment strategy that sacrifices financial for political interests?

Social investing could in principle be attempted by any investor, not just pension trustees. There are three small mutual funds which proclaim adherence to various social principles in selecting their investments.[20] If an individual decides to invest in such a fund, presumably he has balanced the possible financial costs of such a policy against the personal satisfaction that he derives from supporting the social aims implied by the fund's investment policy. Few individuals have found these funds attractive. Another indication that most investors disagree with most social investing campaigns is that shareholder initiatives in support of the main social investing causes are invariably defeated by margins of 95 percent or worse. Furthermore, there has been little pressure on trustees of individual trusts to adopt social investing. The main purpose of the typical individual trust is to generate income for the immediate support of the current beneficiary, who would be strongly inclined to protest if the trustee adopted an inconsistent goal. Many trust intruments authorize the beneficiary or the settlor to change trustees, and such a provison tends to concentrate a trustee's mind wonderfully on profit maximization.

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[18] ERISA sec. 4(b)(1), 29 U.S.C. sec. 1003 (b)(1).

[19] See Marcia G. Murphy, Regulating Public Employee Retirement Systems for Portfolio Efficiency, 67 Minnesota Law Review 211 (1982).

[20] These are Foursquare, Dreyfus Third Century, and Pax World. Foursquare avoids liquor, tobacco, and drug company stocks. According to its prospectus, Third Century limits itself to companies "contributing to the enhancement of the quality of life," whatever that means. Pax World excludes any company more than five percent of whose sales are to the Defense Department. See Pacey, Investment Do-Gooders: A Look at a Dogged Trio of Socially Conscious Mutual Funds, Barron's, Jul. 21, 1980, at 9.

Social investing proposals are directed at pension funds not in order to further the interest of the pensioners, but in disregard of their interests. It is the separation of ownership and control characteristic of pension-fund structure that social-investing proponents find so enticing. Vast sums of money are invested for—but not by—the concerned individuals. That separation, we have seen, exists in large measure to protect present and future retirees against the tendency that some might have to undersave for retirement, or to invest unwisely. But by concentrating the pension savings of tens of millions of people in the hands of a few thousand pension trustees, our private pension system has created a pressure point that would not otherwise have existed. Ironically, therefore, the separation of ownership and control that was meant to protect pension plan beneficiaries has also exposed them to a new danger—that pressure groups may politicize the process of investing their pension savings.

The hidden dynamic in the social investing movement is this effort to take advantage of the separation between ownership and control of pension savings. The pension trustees who control pension investment work under the constraints of trust-investment law. The proponents of social investing understand that by reinterpreting trust-investment law to permit politicized investment they could capture pension savings for their causes.

But why should the proponents employ such a surreptitious strategy, pressuring pension trustees, when a more forthright path lies open? Why not pursue political causes in the political arena? It is vital to understand that, almost by definition, the causes that are grouped under the social-investing banner are *those that have failed to win assent in the political and legislative process*. Congress has the power to mandate all the well-known social-investing causes: forbid American firms to do business with South Africa; require American firms to cease making munitions, or to have unionized work forces; require pension assets to be invested locally; and so forth. Federal legislation could accomplish any of these goals. For example, present federal law applies to Cuba exactly the sort of prohibitions on commerce and lending that opponents of the South African regime have sought without success in recent years from both Democratic and Republican administrations. The reason, therefore, that the proponents of social investing are bullying pension trustees is that they have been unable to get their political programs accepted in the political process.

IV. PRINCIPLES OR POLITICS?

Are there principles of social investing that a trustee can follow with ease? If not, then social investing is standardless, a mere label used to clothe pressure-group demands. If social investing is intrinsically standardless, adherence to it will expose pension trustees to a perpetual wave of political demands.

Consider, therefore, the question of investing in firms that do business in or with South Africa. It is important to understand that there is no controversy about the racial policies of South Africa. People on all sides of the matter have equal disdain for apartheid. But there is broad disdain in the United States for many other regimes. The hard question that proponents have not answered is this: Why is the campaign for divestiture directed almost entirely at South Africa, and not at such monstrously objectionable regimes as Libya or Soviet Russia? South Africa is a place in which 80 percent of the inhabitants are denied political and civil rights that Americans regard as basic. But there are many regimes in which 99 percent of the inhabitants are in this position.

In 1978 Yale University's Committee on South Africa Investments tried to duck this question in a report that said: "We acknowledge the possibility that the policies of other governments throughout the world are equally antagonistic to the basic principles of American society and this University; if so, then our recommendations concerning South African investments should be applied to them."[21] It is not a possibility that there are other such societies; it is a certainty. (At the time that the Ad Hoc Committee wrote its report, the Amin regime was still in power in Uganda and the Pol Pot regime in Cambodia.) What the Committee seems to be saying, if one reads between the lines, is that it will not consider further applications of the social-investing concept until some group raises as great a stink as the opponents of the South African regime have raised. This approach makes social investing a branch of interest-group politics.

In truth, there can be no consensus about which social principles to pursue and about which investments are consistent or inconsistent with those principles. At a time when most of the social activism in investing was liberal or radical rather than conservative, there was some agreement among the activists as to the types of companies that should be avoided and the types that should be embraced. The ranks of the disapproved included companies doing business with South Africa, big defense contractors, non-union companies, and companies that polluted the environment. With the rapid rise of social activism on the political right, we can expect social-investing advocates to appear who will urge investment managers not to invest in corporations that manufacture contraceptive devices, or publish textbooks that teach the theory of evolution, or do business with Russia.[22]

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[21] Yale University, Ad Hoc Committee on South Africa Investments, Report to the Corporation 4 (Apr. 14, 1978).

There is also increasing awareness that the criteria used to identify socially irresponsible companies are dubious even if the ultimate objective—say, pressuring South Africa—is accepted. An American corporation that has a plant in South Africa where it creates jobs, provides training, and engages in collective bargaining with a black union is not obviously contributing more to the perpetuation of apartheid than an American corporation that, without having an office in South Africa, manufactures goods that find their way to South Africa. As the New York Times reported in September of 1984, "[a] survey among black South African factory workers" established their "overwhelming resistance to disinvestment by American firms."[23]

The Massachusetts legislature has lately supplied us with a splendid illustration of the truth that social investing is nothing more than pressure politics. In a recent statute the legislature singled out, in addition to South Africa, one other country for the disapprobation of the state pension fund: Great Britain. Not Libya or Russia; not Iran, Cambodia or Syria, whose regimes have recently massacred tens of thousands of their dissident citizens; but Britain, mother of parliaments and closest great-power ally of the United States. Why? Oh, nothing serious, just a little gratuitous intermeddling in the difficult Northern Irish situation, for the entertainment of the Boston Irish. (The Massachusetts statute is reproduced below in footnote.)[24]

If we move beyond foreign affairs and examine other social-investing causes, we find a similar lack of principle. In labor union circles it has become fashionable to decry pension-fund investment in companies whose work forces have rejected labor unions, but that complaint overlooks important distinctions. For example, which unions? Some American labor unions are clean and are devoted to their members, but others are dominated by organized crime. Is it really "anti-social" to resist a latter-day Jimmy Hoffa? And what of the right *not* to join a labor union? The elaborate election and certification procedures for union representation under federal law presuppose that Congress meant to protect both the right to join and the right to abstain from union membership. Equating unionization with social rectitude thus flies in the face of federal law. Nor would compulsory unionization satisfy all proponents of this branch of social investing, since some have demanded disinvestment in firms, however fully unionized, that invest abroad ("export jobs").[25]

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[22] See John M. Leger, Business Links with Soviets under Attack, Wall Street Journal, Mar. 26, 1981, at 23, col. 3.

[23] Alan Cowell, Blacks in a Poll Dispute Apartheid Foes' Tactic, N.Y. Times, Sept. 23, 1984, at 10, Col. 5.

[24] Annotated Laws of Massachusetts, Cumulative Supplement, Ch. 32, sec. 23 (1)(d)(iii):

> [N]o public pension funds under this subsection shall remain invested in any bank or financial institution which directly or through any subsidiary has outstanding loans to any individual or corporation engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military air craft for use or development in any activity in Northern Ireland, and no assets shall remain invested in the stocks, securities or other obligations of any such company so engaged.

Every social-investing cause can be subjected to a similar analysis. How much pollution is too much? Every time somebody goes to the toilet there is increased pollution. The question is not whether there shall be pollution, but how much, of what forms, in what places, subject to what controls, and so forth. The world is not divided into evil polluters and saintly nonpolluters. A vast body of regulatory law and private law exists to draw these difficult lines, and the blunt instrument of social investing has nothing to contribute to it.

Another form of social investing closely associated with labor union pressure is the effort to use pension funds to create jobs—for example, making mortgage loans from the carpenters' pension fund in order to stimulate employment in the construction trades. If the loans were to be made at market rates of interest, there would be no increase in aggregate mortgage lending or in employment, on account of routine substitution effects (described in Part V below, treating the economic flaws of social investing). Thus, the major effort has been to get the pension fund to lend at below-market rates. This would indeed increase construction and thus stimulate some employment in the industry.

The objection to bargain-rate lending is that it is unprincipled in the sense that it violates the primary policies of pension law. By reducing the financial return to the pension fund, bargain-rate lending necessarily sacrifices future retirement income. For present workers it involves just that trade-off of retirement-for-preretirement income that pension plans were created to guard against. But the objection runs deeper: the benefits and the costs affect different people and in different proportions. In particular, pensioners who are already retired and who depend upon the pension fund for current retirement income would derive no benefit from subsidizing employment for current workers. We shall see in Part VI that trust-investment law (and now ERISA) make it flatly illegal to sacrifice the interests of plan beneficiaries in this way.

The root fallacy behind these proposals, which is repeated incessantly in their rhetoric,[26] is that unions have the right to use *their* pension plans to promote *their* interests. But, of course, the plans are not theirs. The plans exist for the exclusive purpose of providing retirement income for the elderly. For the same reason that pension funds cannot be used to defray union organizing expenses or union officers' salaries, they cannot be used to subsidize employment for union workers at the expense of retirement income for present and future retirees.

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[25] This last suggestion appears in Ruttenberg, Friedman, Kilgallon, Gutchess & Associates, Inc., AFL-CIO Pension Fund Investment Study (Wash., D.C., Aug. 20, 1980) 57.

[26] E.g., Jeremy Rifkin & Randy Barber, The North Will Rise Again: Pensions, Politics and Power in the 1980s (Boston, 1978).

The most persistent of the social investing causes is also the most transparently ignoble—the protectionist crusade for in-state investing of state and local pension funds ("Michigan pension money should not be exported to Indiana"). But that phenomenon is better examined from another standpoint, in Part V, treating the economic futility of social investing.

To summarize: There is not and can never be a consensus about what causes are socially worthy. Consequently, a pension trustee who sought to adhere to the criteria of social investing would have no means of identifying the causes to which he had committed the fund. Since there are no principles, every cause entangles the fund in a political struggle. Social investing would impose upon the fund the turmoil and administrative costs of perpetual politicization of the investment function. But a pension trustee has no business making political choices for his beneficiaries; his job is to further the retirement-income security of his beneficiaries, and to leave them to participate in the political process on their own.

V. THE ECONOMICS OF SOCIAL INVESTING

From the standpoint of economic analysis, two fundamental flaws impair virtually all social investing proposals. First, most are futile. Powerful and well-understood economic forces would counteract most social investing strategies, rendering them hollow gestures. Second, social investing has costs—economic disadvantages that harm the interest of pension-plan beneficiaries. We shall see (below in Part VI) that these economic flaws bear vitally upon the legal standards that govern pension-fund investment.

Substitution. Capital markets (the markets where companies and countries seek to obtain a share of the available savings) are intensely competitive. Capital flows to users who offer the highest returns, adjusted for risk. The capital markets are also increasingly international, as recent experience with Middle Eastern petrodollars, Continental eurodollars, and Latin American debtors has underlined.

The competitive nature of the capital markets complicates many social investing strategies to the point of impossibility. That point has long been made regarding the campaign for divestiture of the shares of companies doing business with South Africa. The object of the campaign is to starve the South African economy of capital. Although it is unlikely that economic stagnation would really help rather than hurt the oppressed peoples of South Africa, it is even less likely that social investing would have any material effect upon the South African economy. Pension money is by no means the only source of investment capital; nor are American firms and lenders the only actors. To the extent that social-investing pressures succeed in limiting capital flows to South Africa from some American firms, that simply creates opportunities for other American firms and for foreign firms. In global financial terms, the South Afrcian economy is miniscule and its external capital requirements correspondingly small. International enterprises and lenders abound who are free from the pressures of the American lobby that concerns itself with this cause. Thus, the campaign to affect the South African economy has had and will have no demonstrable effect.

An incidental indication that the campaign against South Africa is ineffectual is that nobody has bothered to invoke the doctrine of constitutional preemption, in order to have the federal courts declare unconstitutional the various state statutes and city ordinances that direct the respective state and local pension funds to divest South Africa-tinged holdings. These enactments impinge upon the federal monopoly over foreign relations, reaffirmed by the Supreme Court in 1968 in *Zschernig v. Miller*. In that case the court forbad "an intrusion by [a] state into the field of foreign affairs which the Constitution entrusts to the President and the Congress."[27]

In a study published recently in the *New England Economic Review*, the distinguished pension economist Alica Munnell (of the Federal Reserve Bank of Boston) has pointed to the substitution effects that make economic nonsense of the campaign for in-state mortgage lending. Some state pension plans have been purporting to promote in-state construction activity by buying packages of federally insured GNMA mortgages that originate entirely within the state (as opposed to conventional packages that contain mortgages originating in all parts of the country). Since the federal insurance eliminates the risk of default, the regional underdiversification of these packages is unimportant. Munnell concludes that the increasing purchase of these instruments by state and local pension plans has "not increased the supply of mortgage funds . . . ."[28] Rather, a pair of utterly predictable substitution effects are occurring. First, as pension funds increase their buying of these mortgage-backed securities, they simply displace other institutional purchasers such as insurance companies, who shift their investing toward the government and corporate bonds that the pension funds were previously buying.[29] Second, the attempt to stimulate in-state construction by purchasing in-state packages (so-called "targeting") appears to be equally futile, and for the same reason.

> Whereas in the absence of the recent targeting rage, a state such as Massachusetts would buy GNMAs backed by mortgages from a number of states, such as Alabama, California, Pennsylvania, etc., now Massachusetts insists on GNMAs backed by Massachusetts mortgages, Alabama on Alabama mortgages, California on California mortages, Pennsylvania on Pennsylvania mortgages, etc. As long as the state's demand for mortgages is roughly proportional to the size of its pension fund, the developing trend of targeting

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[27] 389 U.S. 429, 432 (1968).

[28] Alicia H. Munnell, The Pitfalls of Social Investing: The Case of Public Pensions and Housing, New England Economic Review (Sept./Oct. 1983) 20, 22.

[29] Id. at 27-28.

> GNMAs should have no impact on the supply of mortgage credit among states.
>
> In summary, while social investing through the purchase of targeted GNMAs produces market returns and thereby has no adverse impact on public pensions, this approach is also unlikely to increase either the aggregate supply of mortgage funds or the supply of mortgage credit within a particular state. This assessment has been generally recognized by financial experts. In fact, those who are less than enthusiastic about social investing often push the purchase of targeted GNMAs as a means of satisfying the pressure on fund managers to pursue socially oriented objectives.[30]

The largest claim for this form of social investing is, therefore, that it may deceive people into thinking that it alters investments outcomes, whereas in fact it results in no net increase in construction or in employment. We must emphasize that the reason these "targeted" portfolios of in-state GNMA mortgages are harmless to the pension funds that buy them is that they contain market-rate rather than below-market loans; and that the government guarantee against default eliminates what would otherwise be a menacing degree of underdiversification. Munnell has pointed out that other vehicles used by state pension plans to invest in in-state mortgages have lacked the federal guarantee and in some cases have entailed below-market lending. Under a Connecticut scheme, for example, she found that "the rates at which the mortgages have been offered has varied substantially to slightly below market. As a result, the yield to the pension fund has been well below the GNMA yield that prevailed at the time the funds were committed."[31] In Part VI below I explain that both under the common law rules of trust-investment law and under ERISA, it would be flatly illegal for a pension trustee to sacrifice the financial well-being of plan beneficiaries in this way. (ERISA does not apply to state and local plans.)

Diversification. Over the last quarter-century a great revolution has occurred in scientific understanding of the behavior of capital markets. This revolution in the theory of finance usually goes under the label of modern portfolio theory (MPT) or the theory of efficient markets.[32]

Crudely summarized, MPT has established two central propositions. First, a massive body of empirical investigation has shown that it is extremely difficult (some say impossible) even for investment industry professionals to achieve long-term results better than the broad market averages, such as (for equities) the Standard & Poor's 500. It seems that capital markets discount new information so rapidly and well that there are few opportunities to outsmart other investors by identifying undervalued securities to buy or overvalued ones to sell.

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[30] Id. at 28.

[31] Id. at 34.

[32] See generally R. Brealey, An Introduction to Risk and Return from Common Stocks, 2d ed. (1983); John H. Langbein & Richard A. Posner, Market Funds and Trust-Investment Law, 1976 American Bar Foundation Research Journal 1.

Second, the capital-market investigators have shown that there are substantial gains to be had from diversifying investments quite extensively. The common law of trusts has long enforced a duty to diversify trust investments, and ERISA codifies that rule.[33] MPT research has given new meaning to the concept of diversification, by showing that in order to eliminate the uncompensated risk of underdiversification, a portfolio must be much larger than previously thought. Optimal diversification requires equity portfolios with hundreds of stocks. Furthermore, these portfolios must be weighted for capitalization, so that large companies such as the oil, auto, computer, chemical, and telecommunications giants are difficult to eliminate from optimally diversified portfolios. The question arises whether social investing, if rigorously pursued, would impair diversification. As more and more social causes are added to the list, the number of companies that are ranked as offenders will become large enough that an optimally diversified portfolio cannot be constructed from the remainder. Social investing would then require the pension plan to bear the costs of the uncompensated risk of inadequate diversification.[34]

The campaign for in-state or localized investing raises especially serious risks of underdiversification. The last thing that workers in declining areas need is to have their retirement savings jeopardized for the supposed benefit of the regional economy. Or suppose that a school board in the vicinity of Mount St. Helens had insisted on investing locally.

The Social-Bargain Fallacy. The claim is sometimes made that social investing is really economically advantageous to pension-plan beneficiaries. For example, companies that do business in South Africa could suffer damage or expropriation from civil war or revolution; companies that resist unionization may incur strikes and boycotts; polluters will get entangled in environmental liabilities; and so forth. Avoiding investment in these firms is, therefore, really a strategy for enhancing the financial well-being of plan beneficiaries by avoiding companies headed for trouble.

This argument is simply another theory of how to beat the market, and like all such theories, it runs afoul of the empirical studies underlying MPT, which strongly imply that consistent market-beating strategies are not to be found. The notion must be that the risks associated with the disfavored companies have not been fully discounted by the securities markets, even though those risks are widely known. But securities markets exist precisely in order to discount such information—that is, to take account of the information in securities prices. Accordingly, all that we know about the behavior of the securities markets suggests that political risk, like any other information that affects future profitability, is fully reflected in current prices. The indifferent performance of the three small mutual funds that have been following social-investing strategies underscores this point.[35]

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[33] Restatement of Trusts (Second) [hereafter cited as Restatement] sec. 228 (1957); ERISA sec. 404(a)(1)(C), U.S.C. sec. 1104 (a)(1)(C).

[34] This point is developed in John H. Langbein & Richard A. Posner, Social Investing and the Law of Trusts, 79 Michigan Law Review 72, 88ff (1980).

To conclude: From the standpoint of economic analysis, there are two types of social-investing outcomes—the futile and the wealth-impairing. The futile are those, such as the in-state GNMA packages, that make no real contribution to the ostensible social goal. The wealth-impairing outcomes lower the return on the fund's savings, or expose it to increased administrative costs, or impose upon it the uncompensated risk of inadequate diversification. We shall now examine the reasons why wealth-impairing social-investing schemes are illegal.

VI. WHY SOCIAL INVESTING IS ILLEGAL

A trustee who sacrifices the beneficiary's financial well-being for any social cause violates both his duty of loyalty to the beneficiary and his duty of prudence in investment.

The Duty of Loyalty. The essence of the trustee's fiduciary relationship is his responsibility to deal with the trust property "for the benefit of"[36] the trust beneficiary. The authoritative *Restatement (Second) of Trusts* says: "The trustee is under a duty to the beneficiary to administer the trust *solely* in the interest of the beneficiary."[37] Although most of the case law applying this duty of loyalty to the beneficiary's interest has arisen in situations of self-dealing or other conflicts of interest in which the courts have acted to prevent the trustee from enriching himself at the expense of the trust beneficiary,[38] the same result has been reached with regard to fiduciary investments for the benefit of a third party (that is, a party other than the trust beneficiary or the trustee). The *Restatement* says, in its Official Comment treating the duty of loyalty: "The trustee is under a duty to the beneficiary in administering the trust not to be guided by the interest of *any* third person."[39] Because the entire object is to protect the trust beneficiary, nothing of principle turns on the identity of the party who profits at the beneficiary's expense.

In the leading case of *Blankenship v. Boyle*,[40] decided in 1971, the duty of loyalty was applied to social investing of pension funds. A multi-employer fund for coal miners that was dominated by the United Mineworkers Union bought large blocks of shares in certain electric utilities in order to induce their managements to buy union-mined coal. On the complaint of some of the pension-fund beneficiaries, the court enjoined "the trustees from operating the Fund in a manner designed in whole or in part to afford collateral advantages to the Union or the [employers]."[41]

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[35] Supra note 20.

[36] Restatement, supra note 33, at sec. 2.

[37] Id. at sec. 170(1)(emphasis added).

[38] See generally 2 Austin W. Scott, The Law of Trusts secs. 170-170.25 (3d ed. 1967 & Supp. 1980).

[39] Restatement, supra note 33, at sec. 170, Comment q (emphasis added). See id. at sec. 187, Comment g (emphasis added):

> The court will control the trustee in the exercise of the power where the acts form an improper even though not a dishonest motive. That is, where he acts from a motive *other than to further the purposes of the trust*. Thus, if the trustee in exercising or failing to exercise a power does so because of spite or prejudice or to further some interest of his own *or of a person other than the beneficiary*, the court will interpose.

For decisional authority see, e.g., Conway v. Emeny, 139 Conn. 612, 96 A.2d 221 (1953).

[40] 329 F. Supp. 1089 (D.D.C. 1971).

ERISA codified the duty of loyalty for pension trusts in its "sole interest" and "exclusive purpose" rules.[42] Section 404(a)(1) provides that the "fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries . . . ."[43] In an essay published in 1980, a pair of Washington lawyers, Ronald Ravikoff and Myron Curzan, attempt to escape this provision of ERISA.[44] I shall devote some space in this article to refuting their essay, both because the essay is misleading, and because it typifies the flimsiness of the legal arguments that are advanced in social-investing circles.

Ravikoff and Curzan correctly observe that ERISA restates the common law duty of loyalty.[45] Accordingly, they reason, since "[t]he purpose of the duty of loyalty is to require a fiduciary to avoid" self-dealing, social investing is unobjectionable "[a]s long as the fiduciary avoids self-interested transactions."[46] But the view that the trustee's duty of loyalty governs only in situations of self-dealing is simply incorrect. To be sure, most people who steal do it for their own gain; that is why most of the case law concerns self-dealing. But the trustee's duty of loyalty exists solely for the protection of the trust beneficiary, and the duty is equally violated whether the trustee breaches for the trustee's enrichment or that of a stranger.[47]

Regarding ERISA's requirement that the fiduciary invest "for the exclusive purpose of . . . providing benefits to participants and their beneficiaries,"[48] Ravikoff and Curzan assert that "[t]he concept of 'benefits' . . . need not be limited to payments that a participant or beneficiary would receive upon retirement, i.e., economic return to an investment. It is arguably broad enough to include numerous types of positive returns, e.g., job security and improved working conditions."[49] This interpretation of the term "benefits" was rejected by the former administrator of the Labor Department's ERISA office, James D. Hutchinson, and a co-author, Charles

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[41] 329 F. Supp. at 1113.

[42] See H.R. Rep. No. 533, 93d Cong., 1st Sess. 13, 21, reprinted in [1974] U.S. Code Congressional & Administrative News 4639, 4651, 4659.

[43] ERISA sec. 404(a)(1), 29 U.S.C. sec. 1104 (a)(1).

[44] Ronald B. Ravikoff & Myron P. Curzan, Social Responsibility in Investment and the Prudent Man Rule, 58 California Law Review 518 (1980).

[45] Id. at 531.

[46] Id.

[47] See text at note 39 and note 39.

[48] ERISA sec. 404(a)(1)(A), 29 U.S.C. sec. 1104(a)(1)(A).

[49] Ravikoff & Curzan, supra note 44, at 532.

C. Cole, in an article cited by Ravikoff and Curzan but ignored on the precise question.[50] Hutchinson and Cole point out that ERISA uses the term "benefits" throughout the statute in the more narrow and natural sense "to refer to those cash benefits that a participant or his family would receive in accordance with the specifications of the [retirement] plan."[51] Hutchinson and Cole conclude "that ERISA trusts are to be established and maintained for the limited purpose of providing retirement benefits and not for other, socially desirable purposes which provide collateral or speculative 'benefits' to plan participants or appeal to the philosophical leanings of the plan sponsor or other parties associated with the plan."[52]

The New York Teachers' Case. The *Blankenship* case insists uncompromisingly that pension trustees must invest for the purpose of maximizing the financial well-being of the pension beneficiaries. Proponents of social investing seeking to escape the force of that precedent have been tempted to juxtapose a misreading of the 1978 case, *Withers v. Teachers' Retirement System*.[53] In the *Withers* case, retirees who were beneficiaries of the New York City schoolteachers' pension fund, Teachers' Retirement System (TRS), challenged the decision of the TRS trustees to purchase $860 million of New York City bonds as part of the plan that prevented the city from going bankrupt in late 1975. Like most public employee pension funds, TRS had not been fully funded. The main asset of TRS was the city's contractual liability to pay benefits out of future tax revenues calculated on past service. City payments to TRS in the 1974 fiscal year constituted sixty-two percent of TRS's total income (as opposed to nine percent derived from employee contributions and twenty-nine percent from investment income). The TRS trustees testified that although the legal situation was far from certain, their best guess was that in the event of city bankruptcy essential city services and past city bond debt would have priority over payments to

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[50] James D. Hutchinson & Charles G. Cole, Legal Standards Governing Investment of Pension Assets for Social and Political Goals, 128 University of Pennsylvania Law Review 1340 (1980). Ravikoff and Curzan cite the Hutchinson and Cole article as it appeared in Employee Benefit Research Institute, Should Pension Assets Be Managed for Social/Political Purposes? (D. Salisbury, ed.) (Washington, D.C., 1980). See Ravikoff & Curzan, supra note 44, at 531 n. 49. I cite the revised version of the Hutchinson and Cole article that appeared subsequently in the University of Pennsylvania Law Review, supra.

[51] Hutchinson & Cole, supra note 50, at 1370 & 1371 n. 151. The only reason that ERISA is less than explicit in defining "benefits" as a strictly economic term is that no other usage even occurred to the draftsmen. In the Congressional findings that constitute the preamble to the statute the term "benefits" is repeatedly used in the conventional and strictly economic sense. "Congress finds . . . that despite the enormous growth in [pension and other] plans many employees with long years of employment are losing anticipated *retirement benefits* owing to the lack of vesting provisions in such plans; that owing to the inadequacy of current minimum standards, the soundness and stability of plans with respect to adequate *funds to pay promised benefits* may be endangered; that owing to the termination of plans before requisite *funds* have been accumulated, employees and the beneficiaries have been deprived of anticipated *benefits* . . . ." ERISA sec. 2(a), 29 U.S.C. sec. 1001 (a)(emphasis added).

[52] Hutchinson & Cole, supra note 50, at 1371.

[53] Restatement, supra note 33, at sec. 164(a).

TRS and hence that payments to TRS would cease. In making the loan to the city, the TRS trustees acted in concert with four other municipal-employee pension funds, which agreed to purchase $2.5 billion in city obligations over a two-and-one half-year period.

The court upheld the trustees' action, even though the bonds bore such a high risk of default that they would not have satisfied the normal standards of prudent investing (the purchase was also excessive in amount and would have been in breach of the duty to diversify). Ravikoff and Curzan interpret the court's rationale as follows:

> *Withers* may represent an interpretation of the prudent man rule that is quite different from that set forth in *Blankenship*. *Blankenship* espouses the traditional conception of the rule: a trustee may not select an investment that fosters nontraditional objectives at the expense of adequate rate of return and corpus safety. In contrast, *Withers* appears to permit a fiduciary to compromise these traditional objectives in favor of the other goals—at least to some extent. The court upheld the trustees' investment only because the investment gave much-needed aid to the fund's principal contributor and helped to preserve the jobs of funds participants. That is, the investment was prudent in this case because it provided "other benefits."[54]

In truth, what the *Withers* court did was to point to the host of special factors that made the TRS purchase justifiable under the traditional wealth-maximizing standards of trust-investment law. The court found that the trustee's "major concern" was "protecting what was, according to the information available to them, the major and indispensible source of TRS's funding—the City of New York," and that the trustees "went to great lengths to satisfy themselves of the absence of any reasonable possibility that the City would be able to obtain the needed money from other sources."[35] The trustees used the bond purchase to precipitate federal government financing for New York City, thereby creating for TRS's beneficiaries the prospect of reaching the federal treasury to satisfy the City's liability to TRS. They "obtained a provision conditioning the pension fund's investment in the City bonds on the enactment of federal legislation" providing for interim financing for the City.[56] Indeed, since the trustees' $860 million investment was about what the City would have had to pay TRS over the two-and-a-half year period in question, TRS "could be no worse off under the plan than it would be in bankruptcy without City funds."[57] The court in *Withers* endorsed the *Blankenship* case, and declared that "*neither the protection of the jobs of the City's teachers nor the general public welfare were factors which motivated the trustees in their investment decision*. The extension of aid to the City was simply a means—the only means, in their assessment—to the legitimate end of preventing the exhaustion of the assets of the TRS in the interest of all the beneficiaries."[58] The trustees found favor with the court for their effort to protect their greatest asset, which was the liability of the City to pay off its obligations to TRS over future decades.

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[54] Ravikoff & Curzan, supra note 44, at 523.

[55] Withers v. Teachers' Retirement System. 447 F. Supp. 1248, 1252 (S.D.N.Y. 1978), aff'd. mem. 595 F. 2d 1210 (2d Cir. 1979).

[56] 447 F. Supp. at 1253.

[57] 447 F. Supp. at 1253.

The Duty of Prudent Investing. Another obligation that trust law imposes on fiduciaries is the duty of care known as the prudent-man or prudent-investor rule. The case law is now effectively codified for pension law in ERISA.[59] The *Restatement of Trusts* words the rule thusly: "In making investments of trust funds the trustee is under a duty to the beneficiary . . . to make such investments and only such investments as a prudent man would make of his own property having in view the preservation of the estate and the amount and regularity of the income to be derived . . . ."[60]

For historical reasons that are widely understood, trust law has placed greater emphasis on risk-avoidance than the modern theory of finance does,[61] but risk and return, however, weighted, are factors exclusively related to the investor's financial well-being. The highly risk-averse investor of traditional trust law accepts a lower return for a lower risk. He does not accept a lower return for some other, nonfinancial purpose. The duty of prudent investing therefore reinforces the duty of loyalty in forbidding the trustee to invest for any object other than the highest return consistent with the preferred level of portfolio risk.[62]

In 1980, the then chief ERISA administrator, Ian D. Lanoff of the Department of Labor, rejected the suggestion that social investing was not subject to ERISA's rules of prudence and loyalty. He said that ERISA requires that the fiduciary's "overall investment strategy . . . be designed to protect the retirement income of the plan's participants," and that both the duty of loyalty and the prudent investor rule would be violated if a fiduciary were to make an "investment decision based on other objectives, such as to promote the job security of a class of current or future participants."[63] Social factors may be brought in only if it is costless to do so. Similarly, the Labor Department approved a 1979 Chrysler/UAW agreement endorsing some social investing of pension-fund assets on the understanding that the investments in question would be "economically competitive with other investment opportunities which may not contain similar socially beneficial features."[64] (As previously explained, the field for costless substitutions is largely limited to the economically futile forms of social investing.)

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[58] 447 F. Supp. at 1256 (emphasis added).

[59] ERISA sec. 404(a)(1)(B), 29 U.S.C. sec. 1104(a)(1)(B).

[60] Restatement, supra note 33, at sec. 227.

[61] See Langbein & Posner, supra note 32, at 3-6.

[62] A similar rationale underlies the trustee's familiar duty to invest promptly, in order to make trust funds productive. See Restatement, supra note 33, at sec. 181, Comment c.

[63] Ian Lanoff, The Social Investment of Private Pension Plan Assets: May it Be Done Lawfully Under ERISA?, 31 Labor Law Journal 387, 389 (1980).

[64] Id. at 392.

The attorney general of Oregon issued a formal opinion in 1978 applying the state's statutory prudent-investor rule to the question whether investment managers for the state university endowment funds could "take political and moral considerations into account in making investment decisions." He ruled that "[i]t is inappropriate and irrelevant for the investment managers to consider any factors other than the probable safety of, and the probable income from, the investments required by the statute."[65]

The proponents of social investing have never reconciled the sacrifice of beneficiaries' financial advantage with the prudent-investor rule. Ravikoff and Curzan try to avoid the common-law rule by rewording it to suit their purpose. After quoting the *Restatement* version,[65] they purport to summarize it in a form which changes it radically, and which they thereafter treat as a statement of the law. The objects of the prudent-investor rule, they say, are "preservation of the trust corpus and attainment of an adequate return."[67] The term "adequate" is their own invention, and in thus implying a standard less than "optimal" or "maximum" it is wholly without authority. The authors later endorse a movement from "adequate" to "moderate or even no return,"[68] still in the name of prudence. It is a revealing commentary on the weakness of the legal case for social investing that its proponents are driven to such transparent manipulation of the legal rules that oppose them.

ERISA's No-Waiver Rule Applied to Social Investing. A general rule of trust-investment law, known as the authorization doctrine, permits the settlor to impose on the trust whatever investment policy he sees fit.[69] The settlor can waive otherwise applicable rules and authorize the trustee to engage in acts of self-dealing or imprudent investment. One of ERISA's innovations was the prohibition against "any provision . . . which purports to relieve a fiduciary from responsibility or liability."[70] Therefore, as Hutchinson and Cole observe, "the [pension] plan documents cannot authorize a policy of social investment that would otherwise be impermissible under the fiduciary standards of the Act."[71] This rule against exculpation clauses eliminated the authorization doctrine from pension trusts.

Consequently, a pension trust cannot be drafted to permit a social investing strategy that would violate the duties of loyalty or prudent investment. This result is quite consistent with the economic analysis of pension savings (discussed in Part II, supra, under the subheading "Contributory or Not"). Because both employer-paid and employee-paid contributions are best understood as deferred wages, they derive from the employee's compensation packet. Since the employee is in this important sense the "settlor" of his own pension-trust account, there is good reason to prevent plan sponsors (whether union or employer) from using the authorization doctrine to impose social investing upon him.

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[65] 38 Op. Or. Atty, Gen. No. 7616, at 2 (May 2, 1978), litigated in Associated Students of the University of Oregon v. Hunt, No. 78-7503 (Lane County Cir. Ct., filed Nov. 22, 1978).

[66] Restatement, supra note 33, at sec. 227, quoted in Ravikoff & Curzan, supra note 44, at 520.

[67] Ravikoff & Curzan, supra note 44, at 520.

[68] Id. at 528.

[69] Restatement, supra note 33, at sec. 164(a).

[70] ERISA sec. 410(a), 29 U.S.C. sec. 1110(a). See also ERISA sec. 404(a)(1)(D), 29 U.S.C. sec. 1104(a)(1)(D).

[71] Hutchinson & Cole, supra note 50, at 1372, 1373-75.

Since, however, the employee rather than the plan sponsor is the settlor-equivalent person, the opposite question arises: Might a pension plan be lawful if it contained a social-investing option that the individual participant could elect or decline? For example, the plan might offer two funds, one that ignored social-investing causes and another that adhered to some political strategy such as excluding the securities of nonunion firms. The employee could elect between the two funds.

It might be possible to bring a social-investing option of this sort within the so-called ratification doctrine of the common law of trusts. Unless a beneficiary is deceived or acts under an incapacity, trust law allows him to ratify investment practices that would otherwise be in breach of the trust instrument or of the common law.[72] The idea is that if the beneficiary is entitled to receive and waste the trust fund, he is equally entitled to allow the fund to be wasted while still in the hands of the trustee. But it is just there that pension trusts part company from ordinary trusts, on account of the protective policy of pension law. The pension beneficiary is not allowed to reach pension assets on whatever terms please him. For example, we have seen that ERISA's mandatory spendthrift rule prevents the pension beneficiary from consuming his pension account before retirement.[73] Further, the Internal Revenue Code now conditions the pension tax concessions on the requirement that retirement benefits be made available in the form of an annuity,[74] in order to protect the retiree from improvident consumption that could exhaust his pension benefits during his lifetime.

Accordingly, it seems unlikely that a genuinely costly social investing scheme could pass muster even as a beneficiary-elected option. For the same reason we do not allow a current worker to spend his pension account on a sports car, we should not allow him to spend it on contributions to political or social campaigns (which is what he is doing when he accepts a below-market return in his pension savings). On the other hand, this rationale seems not to extend to social investing schemes of the merely futile sort, such as in-state GNMAs. Even for these investments, however, the plan sponsor should be obliged to disclose to plan participants that the price of costlessness is futility; and the sponsor should be obliged to arrange for confidentiality respecting the portfolio election of each participant, in order to protect participants from union or other pressures.

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[72] Restatement, supra note 33, at sec. 216(1).

[73] Supra text at note 10 and note 10.

[74] I.R.C. sec. 401(a)(11) (as amended by the Retirement Equity Act of 1984).

This discussion of a social investing option presupposes a defined contribution plan, with individual accounts whose investment risk is borne by each plan participant. In a pure defined benefit plan, where investment risk is shifted to the employer as plan sponsor, there is less reason in law to prevent the employer from assuming the increased costs of a social-investing strategy that entails below-market yields. The employer, however, has good reason to resist such efforts to induce him to increase his pension costs and liabilities. For just that reason, most of the social-investing pressures have not been directed at single-employer defined benefit plans, but rather at union-dominated multi-employer plans, state-and-local plans, and multiemployer defined contribution plans such as the college teachers' TIAA-CREF.

Even within the realm of the defined benefit plan, the plan sponsor does not bear the whole of the investment risk. Under the federal insurance scheme enacted as Title IV of ERISA, a federal agency called the Pension Benefit Guaranty Corporation (PBGC) bears the ultimate responsibility for paying most of the pension benefits promised under a defined benefit plan, in the event that the plan should default.[75] PBGC thus has an interest in preventing plan sponsors from engaging in improvident investment practices that might require PBGC to have to honor the sponsor's defaulted promises. Furthermore, PBGC insurance does not protect plan participants wholly, because there are statutory ceilings on the amount of the benefits covered.[76] Since, therefore, the plan participant would remain at risk for the portion of a defaulted plan not insured by PBGC, the protective policies that indicate that the participant should not have the power to acquiesce in a social-investing option under a defined contribution plan pertain as well in an attenuated fashion to a defined benefit plan.

Corporate Social Responsibility. Proponents of social investing sometimes think they can find solace in the authorities that allow a corporation to engage in charitable giving or other "socially responsible" endeavors at the expense of its shareholders. Indeed, this analogy misled the distinguished trust writer, Austin Scott, who, shortly before his death endorsed social investing of trust funds.[77]

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[75] ERISA secs. 4001 et. seq., 29 U.S.C. sec. 1301 et. seq.

[76] ERISA sec. 4022(b)(3)(B), 29 U.S.C. sec. 1322(b)(3)(B).

The legal analysis that has been applied in the corporation cases, is, in fact, directly contrary to that which would be needed to sustain social investing of trust funds. The rationale that has protected corporate directors from liability when shareholders have brought suit complaining of seeming corporate altruism is that the directors were in fact pursuing the longer-range self-interest of the firm and hence that their conduct has been wealth-maximizing.[78]

Constitutional Objections. There are serious doubts about the constitutionality of the two types of social-investing measures that crop up in state legislation directed at state and local pension funds. As regards the legislation directed against South Africa (or any other foreign power), I have previously mentioned the doctrine of constitutional preemption,[79] designed to preserve the federal monopoly of authority in foreign relations, which was expansively reaffirmed by the Supreme Court in the 1968 case of *Zschernig v. Miller*.[80]

There is also a long constitutional tradition inimical to protectionist state legislation. A main purpose of the commerce clause of the federal constitution was to create national markets. For example, the Supreme Court held in a famous case that New York could not by statute prevent price competition in New York from cheaper Vermont milk.[81] State legislation attempting to create perferences for in-state securities should be no more justifiable under the commerce clause than legislation preferring in-state enterprises. The privileges-and-immunities clause of the constitution has also been interpreted to forbid protectionist legislation aimed at out-of-staters.[82]

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[77] Scott writes:

> Trustees in deciding whether to invest in, or to retain, the securities of a corporation may properly consider the social performance of the corporation. They may decline to invest in, or to retain, the securities of corporation whose activities or some of them are contrary to fundamental and generally accepted ethical principles. They may consider such matters as pollution, race discrimination, fair employment and consumer responsibility . . . . Of course they may well believe that a corporation which has a proper sense of social obligation is more likely to be successful in the long run than those which are bent on obtaining the maximum amount of profits. [Scott is here reciting the social-bargain fallacy, refuted above in Part V of the present essay.] But even if this were not so, the investor, though a trustee of funds for others, is entitled to consider the welfare of the community, and refrain from allowing the use of the funds in a manner detrimental to society.

3 A. Scott, supra note 38, at sec. 227.17 (Supp. 1980). Scott makes no effort to reconcile his support for social investing with the trustee's duties of loyalty and prudence that he canvassed so extensively in the body of the treatise. 2 id. at sec. 170-170.25 (loyalty); 3 id. secs. 227-227.16 (prudent investing). He ignores the ERISA rules, discussed above, that contradict his position. Scott cites some of the literature on corporate social responsibility but does not disclose that the legal analysis that has been applied in the corporation cases is the opposite of the rule he is supporting for the law of trusts.

[78] See, e.g., Shlensky v. Wrigley, 95 Ill. App. 2d 173, 180-81, 237 N.E.2d 776, 780 (1968).

[79] Supra text at note 27.

[80] 389 U.S. 429 (1968).

[81] Baldwin v. G.A.F. Seelig, 294 U.S. 511 (1935).

VII. UNIVERSITY ENDOWMENTS

I have thus far considered the social-investing question only in context of the pension fund. The analysis changes when we move from pension trusts to charitable trusts (or to charitable corporations, which for present purposes are indistinguishable from charitable trusts).[83] This is an area of considerable consequence for university trustees; they are currently being pressured to apply social criteria to the investment of their endowment funds, and some boards of trustees have succumbed.

The distinguishing juridical feature of the charitable trust is the absence of conventional beneficiaries. A private trust (including the pension trust) must identify by name or by class the persons who are to receive the trust property, but a charitable trust is void if it is found to serve individual rather than community benefit.[84] The charitable trust occupies a legally privileged position: it is not subject to the rule against perpetuities; the attorney general or other public officer may enforce it; the cy pres doctrine protects it against ordinary rules of defeasance; and it enjoys a variety of tax and procedural advantages pursuant to statutes that follow the common law criteria for defining charitable trusts.[85] The law conditions the grant of these privileges on the requirement of indefiniteness of beneficiaries. A charitable trust will fail if "the persons who are to benefit are not of a sufficiently large or indefinite class so that the community is interested in the enforcement of the trust."[86]

In place of the definite beneficiaries of private trust law, the law of charitable trusts substitutes the standard of community benefit defined by a circumscribed set of charitable purposes: the relief of poverty; the advancement of religion; the advancement of education and of health (including research); and the promotion of governmental, municipal, and other purposes beneficial to the community.[87] At the border of each of these categories there can be serious questions about whether particular schemes qualify, but the typical university charter declares purposes that fall unambiguously within the category of education and research (and often within that of health as well).

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[82] See, e.g., Hicklin v. Orbeck, 437 U.S. 518 (1978).

[83] See generally 4 A. Scott, supra note 38, at sec. 348.1.

[84] A recent Pennsylvania decision dealing with the claim of the Fraternal Order of Police to be a charitable organization concluded that the group "is essentially a labor organization existing solely for the benefit of its own membership," and those that "its benefits are not applied for the advantage of an indefinite number of persons as would be the case if the public were to benefit." Commonwealth v. Frantz Advertising, Inc., 23 Pa. Commw. Ct. 526, 533-34, 353 A.2d. 492, 496-97 (1976). For a good general background on such cases, see 4. A. Scott, supra note 38, at sec. 375.2.

[85] See Restatement, supra note 33, at secs. 365 (unlimited duration), 391 (public enforcement), 395 (cy pres).

[86] Id. at sec. 375.

[87] Id. at sec. 368.

In analyzing social investing by private and pension trusts, we saw that the trustee's obligation to invest for the maximum financial well-being of the trust beneficiaries derives from the trustee's duties of loyalty and prudent investing; but since, by definition, the charitable trustee does not owe such duties to particular private beneficiaries, the question arises whether there are any legal impediments to social investing of university endowment funds. There are several:

Charter. University charters are often granted by special legislative act, both for state schools and private universities. A university may also be chartered under the general nonprofit corporation statute of the jurisdiction. In principle, an authorizing instrument under the common law of trusts would also suffice. Regardless of the form, a university's charter is usually restrictive; it dedicates the institution to educational and related purposes.

A variety of the causes espoused in the name of social investing are not within the purposes of such charters—for example, expressing disapproval of selected foreign governments, or supporting certain labor union organizing campaigns. For university trustees to spend university funds on such causes directly would be ultra vires and put the trustees in breach of their fidiciary duty to the institution.[88] Were the trustees to pursue the same end by engaging in social investing of the university's endowment funds, they would simply be attempting to do indirectly what they may not do directly.

Under conventional charitable trust law, the state attorney general has standing to sue to prevent such misuses of university endowment funds. Because he is a political officer, and there will often be more votes to gain from supporting than from opposing the groups that advocate social investing, his intervention might not always be a serious prospect. But the attorney general probably does not have a monopoly of standing in such cases; other persons who have a significant economic interest in the fate of the endowment—for example, professors and students—probably may sue.[89]

Noncharitable Purposes. If a particular charter is too restrictive to permit a particular scheme of social investing, the proponents of the scheme may reply that the institution ought to get its charter amended. When the charter originates in special state legislation, the legislature can authorize virtually any use of institutional funds (at least as regards the state law of charitable purposes, although not the federal tax consequences). When the charter is nonstatutory and subject to the common law of charitable trusts, valid charter amendments will be impossible for many social investing schemes. The law of charitable trusts denies private autonomy over the definition of what purposes qualify as charitable. The standard of community benefit does not vary with the tastes of universities or their founders, trustees, and donors.

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[88] See id. at sec. 379.

[89] In Coffee v. William Marsh Rice Univ., 403 S.W. 2d 340 (Tex. 1966), two opposing groups of alumni were held to have standing to intervene in a lawsuit in which the trustees of Rice University were seeking the application of the cy pres doctrine in order to eliminate racially restrictive provisions from the trust instrument that had created the school.

Some of the schemes favored by proponents of social investing are incompatible with these legal standards. In England, a trust for the purpose of changing existing law is not charitable.[90] Although this rule generally has not been followed in American law, our law does attempt to distinguish between "social" purposes, which are permissible, and "political" purposes, which are not.[91] Trusts to promote socialist political and educational activity have been held not charitable;[92] a similar fate befell a bequest to create an educational and information center for the Republican women of Pennsylvania.[93] A Scottish case held that a trust to support resistance to strikebreaking and lockouts was political and hence void,[94] and a New Zealand case ruled similarly against a trust for the League of Nations.[95] University trustees faced with pressures to adapt their portfolios to the requirements of union organizing campaigns, or some group's foreign-policy views, must beware the force of such precedents. The price of yielding to social-investing demands may be litigation costs and potential liability for breach of fiduciary duty.

Costs. From a practical standpoint, university trustees are obliged to give full weight to the savings in administrative costs that result when the institution is spared the needless portfolio reviews and difficult investment decisions that are involved in social investing, especially in view of the absence of agreement on the social principles to be pursued.

Donors. Past donors—more likely their heirs or successors—may claim that since social investing constitutes a diversion from the educational purposes for which the funds were given, it breaches an implied or express condition and ought to trigger defeasance of the funds in favor of the donor. In Illinois, legislation in force since 1874 denies to universities the "power to divert any gift . . . from the specific purpose designed by the donor."[96] Donors would have a strong argument against applying the cy pres doctrine in order to prevent defeasance, since cy pres applies only when it "becomes impossible or impracticable or illegal to carry out the original charitable purpose."[97] Thus, trustees who yield to pressures to divert endowment funds from education to other causes are exposing their endowments to the restitutionary claims of donors and heirs.

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[90] National Anti-Vivisection Soc'y. v. Inland Revenue Commrs., [1948] A.C. 31.

[91] 4 A. Scott, supra note 38, at sec. 374.6.

[92] See id.

[93] Deichelmann Estate, 21 Pa. D. & C.2d 65 (1959).

[94] Trustees for the Roll of Voluntary Workers v. Commrs. of Inland Revenue, [1942] Sess. Cas. 47.

[95] In re Wilkinson, [1941] N.Z.L.R. 1065.

[96] Ill Rev. Stat. 1971, ch. 144, sec. 1.

VIII. CONCLUSION

In emphasizing the legal risks that pension trustees and university and other charitable trustees incur in pursuing social investing, I do not suggest that the law requires social grievances to go without remedy. The law of trusts has been constructed on the quite intelligent premise that the grand social issues of the day should be resolved in those institutions whose procedures and powers are appropriate to them. The political and legislative process of the modern democratic state is well adapted to dealing with pressures for social change. Pension trusts have been designed to provide retirement security, and charitable trusts have been designed to serve specialized purposes—in education, healing, the arts, research, and so forth. A board of trustees is not well suited to be a forum for the resolution of complex social issues largely unrelated to its work. There is every reason to think that trustees will best serve the cause of social change by remitting the advocates of social causes to the political arena, where their proposals can be fairly tested and defined, and if found meritorious, effectively implemented.

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[97] Restatement, supra note 33, at sec. 399.

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DIVERGENT INVESTING OF PENSION FUNDS AND UNIVERSITY ENDOWMENTS: KEY POINTS ABOUT THE PRAGMATICS, AND TWO CURRENT CASE STUDIES

by

ROY A. SCHOTLAND

Gary Trudeau made it clear. That cartoonist and *ex officio* philosopher wrote about a football team's pension fund diverted to meet the needs of Lava-Lava Lenny, the "Polynesian Panzer" who was the whole right side of the team's line. Lenny had an insatiable need for pineapples, so the pension fund was used to buy pineapples. Trudeau asks "But how could you use the pension fund for that?" and his answer captures perfectly the approach of advocates of the countless forms of "social investing": "But the fund was just sitting there." As of course it must sit and grow if it will serve its own major social goal, protecting retirement security.

I agree with John Langbein's elegantly reasoned approach, although my view of Social Security is far more positive than his and my concern about the private pension system's limitations is greater than his. Still, one must concur with his point that the economic soundness of private pension plans is becoming ever more important. Four major points warrant focus. I concentrate at the outset on pension funds, involving $1.277 trillion in assets,[1] and later deal with other institutional investors like endowments, which involve under $30 billion, and foundations involving about $47 billion.[2]

I. CONTEXT

First, let's not use a label that loads the dice: analysis suffers from the outset if the label "social" or "socially responsible" investing is accepted, since few minds will be open to any plea for the anti-social or irresponsible, and hardly any more will think "let the market decide" a sufficient answer. But further, the "social" label is over-broad. Everyone agrees that investing for retirement security is itself a socially responsible goal. More accurate labels would be "alternative" or "divergent" investing, since the proposal is to tap pension assets for goals other than retirement security.

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[1] As of September 30, 1984, private pension assets totalled $934.6 billion, and state and local pension assets were $341.6 billion. Federal Reserve Board, Flow of Funds, Quarterly Levels (November 1984).

[2] The endowment figure is based on Nat'l. Ass'n. College and Univ. Business Officers, 1983 Comparative Performance Study (1984), p. 1; the foundation figure is based on Foundation Center, Nat'l. Data Book, p. xi (1984). Those two categories *together* are only just over 5% of pension assets, for all the public awareness of, say, the Ford Foundation or the Harvard and Texas endowments.

Whatever the label, surely it sounds attractive to invest both to protect retirement security and also to promote such other goals as equal employment opportunity or environmental quality, or local jobs or housing—or to avoid investments in firms engaged in social evils.[3] If "Investment XX" has as high a return and low a risk as other clearly appropriate investments, but XX also promotes common concerns of the pension fund's beneficiaries, then the only investment manager who wouldn't buy XX for that fund would be a misanthrope, hating both his clients and his own firm's future. Obviously, XX has more bang for the buck.

But we cannot stop with how these proposals sound, and we know how artificial is "all other things being equal." The considerable controversy over "social" or divergent investing is more than a fuss over labels or ideology.

Second, the reality behind the rhetoric: The only real issue in divergent investing is whether non-financial considerations should be taken so far as to justify lower investment returns or uncompensated higher risk or lower liquidity. A proposed divergence from the pension funds' traditional exclusive goal to protect retirement security may involve a financial sacrifice, a hidden subsidy to pursue nonretirement goals. *Or*, the proposal may be merely that financial considerations need not be the only ones, that others may be taken into account so long as prudent financial criteria are not compromised. That crucial distinction means that a proposal—whether to favor one category of investments or to avoid another—must be evaluated on the facts, the specific terms of what impact it will have on the fund's investment earnings. The critical first step in dealing with any proposed divergent investment is Sergeant Friday's: get the facts. The facts may not end the matter, but neither rhetoric nor even reasoning are meaningful unless first the facts are out in the open. Which facts, is made clear in the two examples treated fully below.

Third, why is it so important to protect the funds' investment earnings? For any institution, this question boils down to "why is it important to carry out the purpose of the institution?" For pension funds, assuring retirement security means being able to honor the pension promise. Gary Trudeau understands that the fund is not "just sitting there." In all the advocacy of divergent investing, nothing is so loud and clear as the emphasis on how huge are the pension assets—indeed, that fact is almost always the very opening point.[4] But somehow the advocates are Cyclopean, they use one eye and see only the assets, utterly ignoring the liabilities those assets and their earnings must meet. In fact, the assets are small compared to the legal liabilities. State and local funds, with assets now over $340 billion, have projected unfunded liabilities of about 135% of assets, according to the most reliable and latest study available.[5] (An unfunded liability is by no means bad in itself, any more than it is bad for a homeowner to owe on a mortgage. Just as with a mortgage, the question is whether the amount owed is appropriate relative to the ability to pay that debt as it gradually comes due. To evaluate whether an unfunded pension liability is at an appropriate level or is instead a "ticking time bomb," one examines (putting it simply but sufficiently) the level and trend of the annual pension expense as a percent of payroll, and the level and trend of the ratio of assets to liabilities.) Private funds, with assets over $930 billion, have recently been *thought* to have assets greater than their liabilities; but that is only because of a new, misleading accounting treatment forced on the profession and the industry.[6] For example, General Electric—commendably disclosing more data than required by the unsound current standards—reports that its pension liabilities for 1983 are $2.575 billion larger than appears from the mandated disclosure.[7] As GE reveals, the figures it actually uses in operation reveal an unfunded liability of $899,000,000, in contrast to the artificial figure GE is required to concoct and disclose—a supposed surplus of $2.233 billion of assets over liabilities.[8]

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[3] Much current attention, and this paper, focuses on divestment of holdings in firms involved in South Africa. But some institutional investors have long avoided such "social evil" industries as alcohol and tobacco. The Commissioners of the Church of England, for example, avoid stocks of breweries, newspapers and similar social evils.

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[4] "A great body of money surrounded by people who know exactly what they want," Dwight MacDonald's description in the New Yorker of the Ford Foundation, a microscopic fund compared to the ones described here; see n. 2 *supra*.

[5] Arnold, The Financial Status of State and Local Public Employee Pension Funds: Theory and Evidence (unpublished Harvard Ph.D. dissertation, 1982, using 1978 data); for its findings, see Kotlikoff and Smith, Pensions in the American Economy (N.B.E.R. 1983), Sections 7.7-7.10.

In the past few years, state and local retirement systems overall have probably strengthened their funding thanks to a combination of increased official awareness of the necessity of doing so, and relatively strong securities markets. On the other hand, in the 1981-2 recession several major States cut back on their funding, and many States' local systems are an increasingly acute problem, as highlighted by recent official studies in Missouri and Pennsylvania.

The 135% figure is for state-administered funds, the great bulk of all state and local assets; coincidentally, their unfunded liabilities are also about 135% of all outstanding long-term state debt. The 20 cities with the largest pension fund of their own had unfunded projected liabilities of 106 percent of their fund assets, or just half again of their own long-term debt; and a large sample of other localities with at least one plan of 500 or more participants, showed their unfunded projected liability to be 145 percent of their pension assets or almost two-thirds again of their own long-term debt. *Ibid.*

[6] "Misleading" is strong language in this context, but is the word used by AT&T in its annual report; (see 1982 Report at p.38). The word fits. The Financial Accounting Standards Board, over strenuous opposition of seven of the "Big Eight" accounting firms as well as the actuarial profession and the corporations themselves, has worsened the disclosure of pension data and has pending proposals that will do further harm. There is no question that eventually reality will break through, but meanwhile all that we have readily available is materially erroneous information—wrong by mandated commission as well as improperly allowed omissions. In addition to the ways such data make it harder to implement actuarially sound funding policy, they also confuse or mislead both securities analysis and the formation of public policy. They do so generally by conveying a misleadingly sanguine sense of funds' strength to meet liabilities. They also do so specifically with respect to "social investing" in two ways: 1) Reducing the apparent degree of need to meet liabilities only promotes the illusion that at least some of the pension assets are indeed "just sitting there." 2) Moving the pension assets to the balance sheet only strengthens the argument that these are not sums dedicated to a special purpose but are part of the corporate (or local government) assets and so available to serve general purposes.

Many people understandably suffer glazed vision and blurred hearing if an aspect of "accounting" comes up, but this one is simple: pension fund assets are not just sitting there. they and the income they earn are essential to pay promised retirement benefits. If earnings are insufficient, more money must be put into the fund or else the promise is dishonored. Even if the promise is honored, in inflationary times this promise is diluted, perhaps severely, if the promised nominal benefits are not improved during retirement. In fact, most employers (at least large ones) have made such improvements, which obviously depend (at least in part) on the success of the fund's investment earnings. Among public funds, post-retirement increases are explicitly tied to investment results by 5% of funds.[9]

How much do the investment earnings matter? As Ohio State Teachers Retirement System points out, 1% more investment return—say, 9% instead of 8%—means 10-15% more benefits, or a related improvement in a pension fund's actuarial soundness or decrease in taxpayer burden or, of course, some of each.

For the Washington D.C. Retirement Fund's $438,000,000 at end-1983, the difference between a 7% and an 8% return over the next 20 years comes out to $433,000,000; the difference between a 10% and an 11% return is $747,000,000.

Five years ago, investment income was 34% of total receipts for state and local funds; by 1981-2 it had risen to 39% and in 1983-4, it went over 45%. In many systems it is over 50%. This is good news: more investment income equals less battle of the budget—both pension participants and taxpayers gain. But it is important news: how well the assets are managed matters more than ever, not only in absolute dollars—$23 billion in 1983-4 investment income compared to $9 billion five years earlier.[10] It matters more also as a proportion of the total income needed each year to keep the funds sound and so protect retirement security.

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[7] The mandatorily disclosed liability of $8.496 billion is only 76% of the voluntarily disclosed liability, $11.071 billion. GE Annual Report for 1983, p. 40.

[8] Even sophisticated treatments unaccountably accept the misleading figures as if they reflect reality. Contrast Business Week's Pension Scoreboard: A Controversial Glow of Health, Sept. 17, 1984, 153-160 with Pension Scoreboard: Improvement is Illusory, Sept. 14, 1981, 114-118. See also Oppenheimer & Co., The S&P 400—Pension Assets and Liabilities II, June 29, 1984 ("many companies have . . . overfunded pension funds").

[9] Bankers Trust Co., Study of Public Employee Retirement Systems (1984), p. 44.

Fourth, remember Mencken's maxim: The idea that pension investments can be "redirected" and so help solve social problems other than retirement security, is a classic example of H.L. Mencken's rule that "For every human problem, there's an answer that's clear, simple, and wrong."

It is challenge enough to manage pension assets to maximize investment returns (at prudent levels of risk) so as to promote retirement security. But contrast that challenge with managing those assets to promote other goals.[11] Consider the difficulties of implementing the impulse toward divergent goals.

II. THE DIFFICULTIES OF DIVERGENT INVESTING

Hurdle 1: What goals? Everyone involved with a pension fund agrees on at least one goal: protect retirement security. But if other goals are added, which? Consider goals actually proposed, mainly for state and local funds:

I.In-state investing—
a] generally; or
b] mortgages (or other investment in housing)—
  1] generally, and/or
  2] for public employees, and/or
  3] for senior citizens, and/or
  4] for low- and/or medium-income people, and/or
  5] rental housing, and/or
  6] cooperative housing, and/or
  vii] rural housing, and/or
  viii] neighborhood redevelopment;

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[10] The Washington, D.C. projections are from the testimony of David Eager, director of Meideinger Asset Planning Services, consultant to the D.C. Retirement Board, before House Committee on D.C., Hearings on South African Investment, 98th Cong. 2d Sess. (Jan. 31, 1984), at 130, 141-2.

The data on total receipts and investment income for state and local funds are derived from U.S. Dept. of Commerce, Bureau of Census, Finances of Employee-Retirement Systems of State and Local Governments, and id., Finances of Selected Public Employee Retirement Systems (various issues).

[11] "It seems to me that no one really knows *how* to make money, but we all know how to lose it. Common sense and hard knocks teach all of us eventually that one cannot in expectation of satisfactory results or in good conscience serve two masters. It's hard enough to achieve satisfactory results when focusing all of one's energies on making money; it's almost impossible when at the same time one focuses on other objectives—no matter how laudable they may be."

From talk by ERISA Administrator Robert Monks, Dec. 7, 1984, Miami, Florida, on "Social Investing and Social Investing [sic]."

c] small business; and/or
d] venture capital; and/or
e] industry in rural areas.
II. Energy conservation—
a] generally, and/or
b] solar.
III. Environmental protection.
IV. Equal opportunity employment.
V. Unionization.
VI. Avoidance of alcohol, tobacco and defense industries (goals proposed less often for pension funds than for foundations and endowments.)
VII. Avoidance of firms involved with—
a] South Africa or Southern Africa;
b] military activity in Northern Ireland;
c] Iran;
d] Libya;
e] Muslim countries generally (because of their treatment of women's rights);
f] Communist countries.

Hurdle 2: Which priorities? The above goals are so many and so varied that they bring to mind the child's problem in the candy store: "Which do I *really* want?" It may come as a surprise that 12 of those goals were proposed by a single group, Governor Jerry Brown's Public Investment Task Force in 1981. (It's hard to believe that the Task Force deliberately omitted Goals III-VII; maybe avoiding investments in defense contractors and alcohol is not an ethical imperative for California public funds, given that State's defense industry and vineyards—swords *and* plows.) A pending bill in New Jersey with important support in the legislature has a similar shopping list.

In fact, the child's quandary in the candy shop is easy compared to this selection or ranking problem, for what is to be done when the goals conflict? For example, Morgan Guaranty Bank is involved in South Africa but also is the first bank to support black business schools, is a leading lender to minority firms and a leading funder for redevelopment in New York ghettos. Avoid or favor buying their stock? Or: Grumman, the largest manufacturer of solar collectors and heaters, was involved in foreign payoff scandals and is a major defense contractor. Or: Atlantic Richfield, fined by the EPA for using leaded gasoline in company cars designed for unleaded only, has been singled out by the Council on Economic Priorities as the leading oil company in pollution control. Buy? Avoid? Punt?

Hurdle 3: Who decides? Fiduciaries have control of other people's money for one reason: they are believed to be capable and trustworthy to further the purpose of the fund in question, be that purpose retirement security or educational or charitable activity. They may or may not have any expertise on divergent goals, their views about such goals may or may not be shared by many or all or even any of the beneficiaries of the trust, and certainly they were not made trustees to further their own social or political views. This is a crucial distinction between such trustees, and legislators or other elected public officials. (Many state or local teachers', police and firefighters' funds have some elective trustees, but obviously such persons are selected with a single goal in mind.)

It is blatant abuse of trust for trustees selected to further a specified, shared goal, to use their power for personal goals. And if personal goals are pursued to the financial detriment of the trust fund, then the line fades between this conduct and plain embezzlement.

Hurdle 4: How decide? This dichotomy between shared goals and personal goals is not meant to suggest that the only proper goal is the fund's financial gain. Most obviously, compliance with law is required and expected: if a corporation is in sustained, flagrant violation of law, avoiding its stock seems unobjectionable and, I believe, desirable.[12] But slippery slopes are avoided by setting up specific signposts. For example, J.P. Stevens a few years ago was found guilty not merely of repeated, on-going unfair labor practices but even repeated contempts of court, and until its commendable change of course, was the leading labor relations outlaw in the nation. For a collectively bargained pension fund, it would be hard to take seriously any objection to avoiding that stock. But for any trust, such a stock could be avoided for several reasons. First, in the J.P. Stevens instance there was no lack of clarity, or difficulty in determining the degree and uniqueness of the corporate illegality, so there were no information costs or burdens of arguing about the specific situation. Second, there was no lost opportunity or other investment cost, since that particular investment could easily be replaced; the case would be very different were the corporate culprit IBM or GE, but those firms' being guilty of such sustained illegality seems so unlikely that we can leave such a question until, if ever, it arises.

How different the proposition that, for example, a fund should invest only in unionized companies: such a sweeping limit would keep a fund from holding almost any high technology stock, likely inflicting serious loss of investment earnings. But it would be wrong to rush to a sweeping proposition against sweeping propositions. To bar all alcohol and tobacco stocks, for example, has little or no investment implications (because of the modest capitalization involved unlike, say, oil stocks); however, such a ban might reflect shared views in some beneficiary groups, such as a church endowment, but not in others, such as a pension fund with diverse participants. Or, even if there is clear consensus on a divergent goal—say, a state pension fund's favoring investment in firms with in-state employees—one must always determine the investment implications. For New York's funds such a preference would probably make no discernible difference in which securities are held, but for North Dakota, a preference for in-state investing would shrivel fund earnings and drive up pension costs, driving up taxes and injuring economic development instead of aiding it. I remember one small State's pension investment officer's saying that the only thing worse than not investing in-state, is investing in-state and losing.

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[12] The New Jersey Investment Council has adopted a new standard for its $13-billion-asset holdings: "good corporate citizenship." Annual Report 1984, p. 11.

In short, the specific facts of different proposed divergent investments make some of them desirable, some acceptable, and some injurious or unfair abuse of trust. If there is doubt about whether an investment is prudent, it is unquestionably wrong to go forward, since so many clearly prudent alternatives are available. Similarly, if there is doubt whether a divergent goal (even one which is not injurious financially) commands the necessary overwhelming concurrence of the beneficiaries, then it is improper to pursue such a goal.

What of polling the beneficiaries about whether they want to pursue X divergent goal? Polling has legal limits, certainly has some costs and possibly large ones, and usually is unfeasible. It would be legal to follow poll results if all beneficiaries agree, but it would be illegal to delegate to a mere majority the trustees' responsibility to pursue the shared interest of all beneficiaries. Polling would be costly if the beneficiaries are numerous. And often polling would be unfeasible because the issue is so complex or requires just such investment understanding as to exemplify why we have trustees in the first place. Further, even if one assumed a clear issue and an adequately comprehending group of beneficiaries, the likelihood is that polling secures only such low participation as to preclude any confidence about the degree of agreement. For example, when South Africa divestment (even if that were clear and understood) for the University of Oregon's endowment was put to student vote there in 1977, almost 95% of the *voters* supported divestment. But the total number of voters was under 10% of the university's 16,000 students, not even counting the future students for whose benefit such funds exist and who would be affected far more by any new investment policy than the voting students who would be gone before the policy took hold.

Perhaps the clearest indication of the difficulty and divisiveness surrounding this question of *how* to choose any divergent goal, is the fact that Gov. Brown's Task Force divided 23-7 on whether to have California public funds take even so modest a step as submitting proxy proposals upon request of only 10,000 participants (or 10%).[13]

Hurdle 5: The lack of information—corporate responsibility and irresponsible responses by institutional investors: Investment decisions are made on the basis of an enormous flow of audited, comparable, continuing data on corporate performance. An entire profession of financial analysts brings trained, experienced expertise to bear on such information. A few nonfinancial goals present no information difficulty, for example, avoiding alcohol or tobacco stocks (although even that is not so easy since the development of corporate conglomeration). But if a portfolio manager must decide whether a corporation has at least 1,000 employees in the state; or worse, whether it is engaged in "doing business in or with South Africa" (the restriction in Massachusetts and several others places); or still worse, whether it does more than $X of such business (the threshold in the Oregon Board of Higher Education resolution is $500,000) . . . in all such instances, the difficulties are huge. The fact that "there is no systematic method for obtaining and evaluating information about the activities and practices of companies in which the funds invest" is deemed one of the prime reasons "the current decision-making framework [for divergent investing] appears inadequate," according to one of the best studies advocating divergent investing.[14] A similar study, done by an able organization for a California state agency, also emphasized "the incomplete and preliminary nature of much of the data available"—"a prerequisite for development of a coherent ethical investment policy for just these two issues [EEO and involvement with South Africa] requires the gathering of sufficient data upon which informed judgment can be based."[15]

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[13] Final Report (Oct. 1981) at 54, 62-3.

The data gap does not mean pension fund managers cannot find out about General Electric's relations with EEOC, or General Motors' relations with OSHA. But how decide whether GE or GM is notably good, or notably bad, without employing some standard of comparison? Without comparable data, investment decisions on non-financial grounds risk being inaccurate (and therefore unfair) as well as ineffective; Company A might look good or bad on, say, equal employment, only as long as one doesn't know how others in its industry or its geographic area are performing. Producing responsible analyses in this area is a considerable task involving substantial costs.[16]

The problem of timely data is pointed up by the fact that months before release of that able group's report for California, listing Coca-Cola as a "bad" investment because of its activity in South Africa without agreeing to the Sullivan Principles, Coca-Cola had switched its position—in response to a shareholder proposal—and signed the Principles. Worse, as late as 18 months after that switch, the group was still handing out a summary with Coca-Cola at the top of the list of sinners, without even oral correction in at least one large meeting, presumably in many.

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[14] Coltman & Metzenbaum, Investing in Ourselves (Mass. Social & Economic Opportunity Council Task Force, June 1979), at 29.

[15] Council on Economic Priorities, A Study of Investment Practices and Opportunities (1980), at 68, 144, 159-60.

[16] The Council on Economic Priorities' study of political influence and lobbying by military contractors cost $75,000; its study of nuclear power's impact on job creation (in one locale!) cost $292,000; its much-praised study of paper companies' pollution practices cost $50,000 (and that was back in 1969-1970).

Although responsible "social performance" data are costly, they can be developed and certainly I join in believing they should be. But this will occur only if groups, instead of seeking publicity about being "socially responsible," try to implement that goal by joining with major companies and major institutional investors, to bring us social performance data that could be used to supplement financial analysis. We need the economies of scale if such data are to be sound and routinely available, the *only* way such data can be used properly and maybe matter.

In short, the goals can be pursued only at information costs which themselves injure net investment results; or cannot be pursued; or can be pursued only incompletely and episodically, producing efforts to reward corporate responsibility or punish corporate irresponsibility on bases that are closer to random than to prudence.

Hurdle 6: Inviting conflicts of interest: To the extent that the divergent investments are aimed to benefit—or bring pressure on—firms or ventures situated in the same locality or industry as the pension fund, consider what kinds of investments are likely to occur: those with political appeal, and often those that raise acute conflicts of interest. If a construction union invests in mortgages to finance a construction project on which its members will have jobs, can we be confident that the projects will be selected by neutral criteria? If state and local pension funds are to invest in local projects, then (once we abandon the discipline of seeking market returns) won't there be enormous maneuvering for the pension fund dollars, with politics replacing market return as the determinant? Fiduciaries who are faithless or unclear about their duty can always find ways to use trust assets to their own benefit.

Politics are the right measure of who gets into office and how public policy issues are resolved. Contrast the safeguards surrounding political decisions (pork-barrel or not) as against what will happen when the bees gather around the pension fund honey pot. Not even the strongest and most representative pension board will have as much independence, as much political balance of countervailing forces, as a legislature. And rarely if ever would a pension fund investment decision have as much public visibility and relative comprehensibility as decisions being forged in the legislature.

Hurdle 7: How hold the fiduciaries accountable? When the only goal is maximizing investment returns at a prudent level of risk, evaluating how well the trustees have done (in setting investment policy and selecting and overseeing the money managers) is easy. Not as easy as measuring the size of a room, but we have recognized methods and expert, independent firms to evaluate investment performance. How do we evaluate the portfolio managers' performance, if we diverge from traditional prudent investing with its sole focus on investment return? How evaluate success or failure in furthering the divergent goals? In short, the pension fund engaging in divergent investing is likely to become captive to whatever interests have muscle—whatever form their strength may take—to shape the choice of divergent goals and the selection of specific investments. As everyone who has ever dealt with money managers knows well, however strong or weak their investment performance, they are always deft at salesmanship. When performance is not strong, they will unfailingly explain that it was not their own limitations but the result of . . . whatever scapegoats are available.

If trustees cannot evaluate their money managers and the beneficiaries cannot evaluate their trustees, there is no accountability. Accountability is the only effective safeguard against self-serving, negligent or incompetent fiduciaries.

Hurdle 8: For all those difficulties and costs and risks, in anything gained? Possibly. But usually not, even when prudent financial standards are put aside in favor of hidden subsidies for the divergent goal, as exemplified by numerous union and public funds' special mortgage investing during recent periods of scarce mortgage financing (see below, section III.B). And where prudent financial standards are maintained and investments are made on market terms, many observers believe that our capital markets operate so efficiently that the favored divergent goal ends up with no more support than it would have gotten anyway.[17] Since I believe our markets are essentially efficient but less than wholly so, I am confident that there may be gains even if, for example, a state fund makes in-state mortgage investments on market terms, especially if it does so in periods when very little mortgage money is available.

If greater emphasis is to be placed on local investing or other new criteria, two simple steps will assure both protection of retirement security and effective pursuit of the collateral goals. First, the public fund should never buy privately placed securities (or other investments) in which its stake is larger than 50% at maximum, with the balance being purchased on the same terms by other tax-exempt institutions. That assures against investments resulting from improper influence, and also against inadequate analysis. Second, public funds themselves lack adequate staff or expertise to go beyond recognized investment criteria. New York's Comptroller Edward

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[17] See Langbein, § 5, above. See also Litvak, Pension Funds and Economic Renewal, at 13 ("Development Investing in Name Only") (Council of State Planning Agencies, 1981); and see my Should Pension Funds be Used to Achieve "Social" Goals, 119 Trusts & Estates 26, at 26-27 (Nov. 1980; last of three parts, Sept.-Nov. 1980). The foolishness of trying to use pension investments as a tool for economic development is pointed up by the catchily-entitled 1978 book "The North Will Rise Again," aimed at reviving New England and the upper midwest by local investing of local funds. The book was a good read as fiction; its unreality is analyzed at 119 Trusts & Estates 22, n. 8 (Sept. 1980). New England has risen again remarkably, but the "driving force has been education. We have 260 colleges in New England, 65 in the Boston area alone. It's been the wellspring of our entrepreneurship." Bank of Boston's chief economist James Howell explaining New England's gain of 222,000 jobs between 1975-80, Wall St. Journal, New England's Big Recovery: The 'Most Spectacular' Event [in the history of Western capitalism]?, Dec. 18, 1984, p. 37.

Localizing pension investing also runs the risk of retaliation by local funds elsewhere. San Antonio's well known Mayor Henry Cisneros warned New York City businessmen of this, assuring them he did not feel vengeful but that a popular bumper sticker in his region was "Forget the 55-mile-per-hour speed limit—drive 60 and freeze a Yankee." New York Times, Sun Belt 'Revenge," January 27, 1982.

V. Regan has proposed that more local investing can be done and done well if state agencies expert at, e.g., development, will assemble packages of appropriate investments and bring them to groups of private and public institutional investors.

Last, the sheer indirectness of many of the efforts to invest to pursue divergent goals, must be faced. For example, there are a few small mutual funds (long in business but never significant in asset size) aimed at "socially responsible" investing. Pax World Fund, sponsored by officials of the United Methodist Church, is always mentioned and is obviously aimed at a goal we all share. But how much peace is promoted by a fund averaging $3 million (never over $13 million in its 13 years)? It has produced results for the firm operating it, an annual expense ratio of about 1.6%, unequaled by few if any other mutual funds. It has produced poor investment returns, an annual average of 11.9% for five years, compared to 13.2% for the average similar fund (Lipper, balanced funds). Wouldn't everyone involved (except the firm managing the fund) be better off with direct contributions to charities working for peace or, say, feeding and educating children the world over?

III. TWO CASE STUDIES

A. *State and local pension funds and recent pressures for in-state mortgage investing*

Between 1980 and 1983, when interest rates were alpine and mortgage money was abyssmal, there were acute pressures nation-wide to draw retirement assets into mortgages. In 31 states, these pressures were represented as "in-state targeting," allegedly to aid local homeowners and the construction industry. In only a handful of such States did homeowners get better-than-market rates; in only a few States was new construction aided. But in most of these States, instead of continuing or expanding holdings of in-state-targeted GNMAS or similar established mortgage investments, new kinds of packages were assembled. As a full analysis by the South Dakota Investment Council[18] found, the new packages were higher risk than alternatives like GNMAS; were also less liquid or completely illiquid; and yet yielded *less* than did the established alternatives. Consider one example of these special in-state packages.

North Carolina's pension fund in 1981 bought a $53 million package of mortgage-backed bonds issued by a new corporation that was capitalized for $1,000 and that sold no other securities to anyone. The corporation was owned 50% by the savings and loan associations, 50% by the mortgage bankers of the State. The yield was 34 basis points (i.e., 0.34%) below yields available at the same time on GNMAs, which are insured by the Federal Government and readily salable in a highly liquid secondary market.

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[18] Analysis of 23 "In-State" Mortgage Packages Privately Placed with State and Local Retirement Funds, Oct. 1980-March 1982 (May 1982), reprinted in Joint Hearing on Public Employee Pension Benefit Plans, House Committees on Ways and Means and Education and Labor, 98th Cong. 1st Sess., at 321 (Serial 98-56; Nov. 15, 1983).

Why should the "NICMICs" have yielded *less* than GNMAs? The lower yield translates to about $2 million less return on that size package over its expected life; the difference between insurance by the Federal Government and the NICMICs' insurance by a subsidiary of Merrill Lynch, has been estimated to come to roughly another $2 million; if, as appears to have been the case, the state fund was obligated to buy under a forward commitment but the sellers were not obligated to sell (they would not if interest rates had shifted in their favor) then that was worth roughly another $0.5 million; and since the NICMICs could not be sold easily, being an utterly unique security, their lack of liquidity came to roughly another $2 million. All that comes to a give-up of about $6.5 million on that package of $53 million. Why would a state pension fund so subsidize an investment?

Certainly there is agreed-upon social value in promoting home ownership, especially for low or middle-income housing. But, the facts. First, home buyers got market rates, not lower ones. Still, there might be aid enough in getting any mortgage money when it is all but unavailable, especially for lower-income families. But, the flaw in that justification is that only 5% of the funds went to people with under $12,000 annual income. Well, one may respond, the mortgages must be secure. That is unarguable, but: over 30% of the funds went to people with annual incomes over $36,000 and the ceiling on how much a borrower could get—not the home price, but the mortgage, for 1981 in North Carolina—was $150,000. (In another State's similar mortgage package the ceiling was $200,000.) How does one justify taxpayers' having to subsidize (by contributing more to the pension fund to make up for these poor investment returns) getting mortgage money to *upper*-income people? Well, some defenders of these packages would say, all this occurred when the housing industry was inert, and the State gains importantly from supporting construction jobs. But: half of the mortgages were not for new housing, nor even for new purchases of existing homes—half were for mortgages "off the shelf," that is, ones issued up to five years earlier. Well, one might respond, selling those older mortgages makes new funds available to the savings and loans and mortgage bankers, and those new funds can go to new mortgages. But: while I have been unable to pin down whether the NICMICs involved any commitment as to the use of those new funds, a number of state funds and small multiemployer funds in the construction industry did fail to secure any commitments and soon discovered that the thrifts (and/or mortgage bankers) used the new funds to buy Treasury securities.

North Carolina's was not an unusual deal. The South Dakota pension fund was under pressure from local firms to buy a similar package, insured by the leading private mortage insurer, MGIC. South Dakota's Investment Council agreed that market terms were essential, so analysis was done on the 23 in-state mortgage packages privately placed to state and local pension funds between October 1980 and March 1982 (when the data were gathered). All were MGIC-insured, some rated single A, most AA, some unrated. Most had little or no liquidity. How did they compare with the completely liquid, Government-guaranteed GNMAs, which could also be packaged with mortgages from one state or large locale? The average MGIC-insured package was 149 basis points different from contemporanteous GNMA yields, or around 10% of the interest rates then paid.

Of course financial experts would differ on just what is the appropriate margin for the MGIC packages' lower quality, lack of liquidity, etc. But dispute can be avoided because the average MGIC in-state package was yielding not 10% *more* than GNMAs, but 10% *less*. Compared to FHLMC "Freddie Macs," the average inferiority of the special in-state packages was 177 basis points. And even those average margins of *inferiority* would have been worse but for the fact that four of the special packages were of *second* mortgages; not even MGIC could sell those, not even to state funds, at yields lower than GNMAs.

By no means did all state funds crumble before these pressures. Texas State Teachers participated but at strong yields. South Dakota, New Jersey, New Hampshire and others completely stood off the pressures. But an update of South Dakota's study found that as of June 1983, 31 States' funds had participated in $500,000,000 of special in-state packages insured by MGIC, receiving investment returns at least $10,000,000 *per year* poorer than were readily available in GNMAs and similar securities.[19] Nor did homeowners benefit: only in Massachusetts, Michigan and Oklahoma were preferential rates given. In addition, Connecticut's fund bought $473 million of local mortgages (MGIC was not involved, as it was not in North Carolina), at rates badly below GNMAs but also on below-market terms for the homeowner. The flaw there was that the mortgages were allocated by chance: whoever happened to be buying a house when the money was offered, and got into line early enough the night before (literally) enjoyed a subsidized mortgage. That contrasts sadly with the long-established and regularized program for public employees in Hawaii, or a careful new one for active and retired public employees in New Hampshire.

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[19] Munnel, The Pitfalls of Social Investing: The Case of Public Pensions and Housing, New England Econ. Rev. (Sept/Oct. 1983).

While Munnell and the treatment here deal with only state and local funds, that is partly because the information about their investments is available, thanks to South Dakota's Investment Council. There may be similar problems in some multi-employer pension funds. According to Randall Smith, the leading reporter on pensions, in February 1982 the Labor Department's Los Angeles office recommended that the Department sue the trustees of several construction-union pension funds in Southern California for breaking Federal pension law by investing $268 million in local union-only projects, much of it at below-market rates. Secretary Donovan received a unanimous staff recommendation to sue, around April 1983. As of Smith's report and as of January 1985, no further decision or action has occurred. Wall Street Journal, Constructive Plan? Use of Pension Funds to Create Union Jobs Raises Issue of Legality, Jan., 17, 1984, p. 1.

How well any such investing does boost jobs (or tax revenues in the case of public funds) is another matter on which claims outrun facts. For example, Gov. Brown's 1981 Task Force claimed that new housing investment would produce almost twice as many jobs as even the local construction industry claimed. Contrast Final Report n. 13 supra at 22-3 with Construction Industry Research Board, Summary of Economic Impacts: Investment In New Housing Mortgages. (Sept., 1981), table 2.

This 1980-83 experience shows that under such guises as promoting jobs or local home ownership, the taxpayers and pension participants are victimized by closed-door concurrence in complex deals usually bringing benefits neither in jobs nor for home owners. But always benefitted are the politically muscular groups that seek aid they cannot secure in the more open and representative legislative. There is enough legitimate controversy over how, how much and which housing should enjoy public subsidy decided upon in proper legislative process. Hidden subsidies squeezed out of pension funds are a case study in how not to proceed.

B. *South Africa-Involved Investments*

1. Factual context

We may take it as a fact that Americans abhor apartheid. I personally am certain as a matter of morality, politics and history, that American companies cannot "do business as usual" involving South Africa, and that American investors cannot do investing as usual in South Africa-involved firms.

The question is not whether any steps shall be taken, but only what steps may help move the situation away from the abhorrent.

Institutional investors have been involved in more controversy over this issue than any other non-financial one. Some spontaneous efforts and some nationally organized ones have arisen in periodic waves since 1961 on many college campuses and, since about 1980, in several state legislatures and city councils. Many foundations, churches and charitable organizations have also grappled with this issue. Much more than on the other issues noted in this paper, there is here overwhelming rhetoric and unusual impatience to consider facts. And no other issue generates such emotion—and, on unfortunate occasions, such racial divisions—as this one.

Since 1961, when student drives for divestment began, U.S. firms' fixed investment in South Africa has risen about 50 times. Even adjusted for inflation, so great a rise indicates to some people that the divestment drive is farcically futile, to others that it is needed more than ever. As of 1982, U.S. firms' fixed investment there was $2.3 billion, just at cost values;[20] that is about 17% of all foreign fixed investment, about 3% of all investment there.[21] In addition, our financial institutions had loaned over $3.6 billion to South African borrowers, and U.S. investors were estimated to hold about $8 billion of shares in South African firms, bringing the total U.S. financial stake there to over $14 billion, second to Great Britain's. In contrast, total South African assets in the U.S. were estimated to be only $200 million as of 1978. Our exports to South Africa totaled $1.4 billion in 1979, $2.45 billion in 1980, $2.9 billion in 1981, $2.36 billion in 1982 and $2.11 billion in 1983. That means about 60,000 jobs in the U.S.; each $1 billion of U.S. exports supports about 28,000 jobs here.[22] We have unilaterally embargoed arms sales to South Africa since 1962, and have sold nothing there for nuclear power operation. Our imports from South Africa include 82% of our platinum, 87% of our vanadium, 48% of our chrome, 45% of our manganese, 13% of our gold and 67% of our industrial diamonds. We are South Africa's third largest trading partner, after Japan and Great Britain.

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[20] This was down from $2.6 billion two years earlier, according to the U.S. Commerce Dept. Some may attribute the drop to divestment pressures, others may attribute it to the depressed state of the economy in 1981-2 in both countries, and to straight-forwardedly commercial decisions to withdraw, like Chrysler's.

As for how many U.S. companies do business in South Africa, not only is there constant flux but different sources report substantially different figures, wildly different in one major instance.

- One authoritative source, Arthur D. Little, Inc. in October 1984 named 281 companies, including at least 31 with 10 or fewer employees; but the report noted also that as many as 40 more were believed to belong in the list, bringing the total to about 320.[23]
- The most thorough study of the investment ramifications of divestment, published in December 1984 by a major investment firm managing a "South Africa-free" portfolio for the District of Columbia Retirement System, listed 229 companies.[24]
- But a month later, the authoritative Investor Responsibility Research Center published a list with over 287 companies.[25]
- Another investment study (February 1983) by a major investment firm managing such a portfolio for Michigan State University, listed about 270 companies.[26]

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[21] Unless otherwise indicated, the US-SA data are from Davis, Cason and Hovey, Economic Disengagement and South Africa: The Effectiveness and Feasibility of Implementing Sanctions and Divestment, 15 Law & Pol. Int'l. Bus. 529 (1983) (advocating divestment) and Chettle, The Law and Policy of Divestment of South African Stock, *id.* at 445 (*contra*).

[22] Export data from U.S. Dept. Commerce. Job figure from U.S. Dept. Commerce, Int'l. Trade Admin., Export Factsheet (Dec. 20, 1982).

[23] Eighth Report on the Signatory Companies to the Sullivan Principles, pp. 2, 12 and 42-4 (1984).

[24] Wagner, Emkin and Dixon (of Wilshire Associates), South African Divestiture: The Investment Issues, Financial Analysts Journal 14 (Nov.- Dec. 1984).

[25] IRRC Directory of U.S. Companies with Operations in South Africa (1985).

[26] Trinity Investment Management Corp., Structuring Portfolios from a South Africa Free Universe (Feb. 1983).

- But one month later, the District of Columbia's study by a major pension consulting firm listed 201 companies. [27]
- And that same year, three advocates of divestment said "approximately 6,000 U.S. companies do business in South Africa," relying on the most prestigious study, "Report of the [Rockefeller Foundation] Study Commission on U.S. Policy Toward Southern Africa: Time Running Out."[28]

Two points emerge. First, while a core of companies maintain a presence in South Africa, many others come and go, acquiring subsidiaries and selling them, so that even a fund determined to avoid South Africa-involved companies must either compromise significantly in light of information difficulties, or risk highly imprudent portfolio turnover and costs—or both.

Second, does it make sense to treat a company maintaining a presence in South Africa, regardless of size or amount of business, as more supportive of apartheid than a company with no office or employees there but making major imports or exports? For example, Boeing has fewer than 10 employees in South Africa; considering its products, does its presence matter less than, say, Coca-Cola? If Boeing had no office in South Africa but still sold planes there, wouldn't it still matter a great deal? GM and Ford have plants in South Africa, but the leading sellers of cars there are the Japanese. Does it make any sense to divest GM and Ford stock, but allow unrestrained investing in South Africa's leading trading partners, Japan and Great Britain? What of the New York Times, Washington Post and American Broadcasting company, with offices there but not even Sullivan Signatories? (They may be distinguishable, though *Time* and I doubt it.) How can the advocates of blunderbuss divestment attack companies that are in South Africa, almost none of them doing even 1% of their business there, but at the same time allow investing in American companies importing from South Africa or using—and so keeping up the price—of South Africa's platinum, vanadium, manganese, chrome, and gold? And, after all, how allow investing in the securities of the most important American institution involved with South Africa, the U.S. Government?

Clearly, the determined South Africa-free investor ends up either keeping money in the mattress or making major compromises, questionable not merely in policy and logic but also in fairness. Dubious compromises become indefensible if more sensible alternatives to absolutism are available and being used.

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[27] Meidinger Asset Planning Services, D.C. Special Investment Study: South Africa Proposal (March 31, 1983).

While there were earlier efforts to analyze divestment's investment implications, they (except for Trinity's, supra n. 26, and perhaps unpublished ones) either utterly ignored relative riskiness, liquidity, manageability, etc.; or treated such crucial aspects only with a verbal acknowledgment, or only in part; or were simply superficial. For example, one published in 1979 was "heavily qualified" by its author in testimony later that same year because "important procedural, legal and economic implications have not been examined." BNA Pension Reporter, Dec. 17, 1979, p. A-19, reporting on Andrew Rudd's testimony about his Divestment of South African Equities: How Risky?, J. Portf. Mgt. (Spring 1979), p. 5.

[28] The Commission was chaired by Ford Foundation President Franklin A. Thomas; it was published in 1981 by Univ. Calif. Press. The 1983 article using the 6,000 figure is Davis, Cason and Hovey, *supra*, n. 21.

2. The seven lines of action about South Africa-involved investments: There are fundamental differences between the divestment statutes passed in Massachusetts, Connecticut, Nebraska, Maryland and Michigan, wholly apart from the fact that the first three deal with their state pension funds, Michigan's with its university endowment, and Maryland's only with bank deposits. New York City's pension funds and Harvard have taken still other courses. Unless we focus on these differences, debate may be unnecessarily polarized and unwise action promoted unwittingly.

(a) Massachusetts has adopted blunderbuss divestment: its pension fund can hold no companies doing business in or with South Africa,[29] which is taken to mean the 250-or so firms usually listed as having a presence in South Africa. Similar blunderbuss restrictions have been imposed on the retirement funds of the District of Columbia, Boston (which adds Namibia), Hartford and Philadelphia. It is important to add that Massachusetts adopted similarly sweeping divestment of firms involved in military action in Northern Ireland—a newer statute signed into law on March 17, 1983.[30]

(b) Connecticut originally passed a similar statute, but after the Governor vetoed it as not having been adequately considered, substantial study was done and a very different approach adopted: divestment is not applied to firms which have secured the top two ratings of compliance with the Sullivan Principles (see section C and Appendix) unless the company supplies strategic products or services to the Government of South Africa.[31] The State Treasurer has begun reporting on the pension fund's South Africa efforts—what has been sold or put on their "avoid" list, what dialogs are occurring with specified companies, and, happily, which companies have signed the Sullivan Principles since the State's effort began.[32] The *difference between the Connecticut and Massachusetts statutes matters enormously in investment implications*, treated fully below, *and in the morality of the distinctions that Connecticut recognizes and Massachusetts ignores*. The National Association of State Treasurers has formally endorsed the Connecticut approach.

(c) Nebraska limits permissible holdings for its pension fund to firms

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[29] Title 32, § 23(1)(d)(vi); Stat. 1982, c. 669.

[30] *Id.*, § 23(1)(d)(ix); Stat. 1983, c. 661.

[31] Public Act 82-324, Conn. Gen. Stats. § 3-13f. Connecticut has also since 1980 a statute provoked by the Iran hostage crisis, barring investments in firms dealing with Iran "contrary to the foreign policy or national interests of the United States." Public Act 80-431; § 3-13g. That 1980 statute has never been implemented.

[32] Henry E. Parker to Members of Investment Advisory Council, March 14, 1984 (first semiannual report on their two largest pension funds).

in the top rating of Sullivan Principles compliance, a difference with significant investment implications.[33]

(d) New York City's Retirement System trustees in 1984 adopted a five-phase approach to divesting:

> After 15 months: companies doing business with the South African military and police, providing financial services to the Government or refusing to sign the Sullivan Principles.
>
> After two years: companies that have signed the principles but do not allow monitoring of compliance.
>
> After three years: companies that do not achieve the highest rating in complying with the Sullivan Principles.
>
> After five years: all companies except those whose activities are deemed by the trustees to be of substantial assistance to efforts to eliminate apartheid.

Their City Council is now considering barring investments in companies that discriminate against Catholics in Northern Ireland.

(e) Michigan's statute requires divestiture by its state university endowment; it is now in litigation, the Board of Regents claiming infringement of their authority under the state Constitution. On the one hand the statute is absolute as in Massachusetts, but its moral absolutism is called into question by the provision that the proceeds of divestiture sales should be invested in Michigan firms. And while the Regents have denied that they are required to comply with the statute, they have chosen to sell some holdings but to keep particular holdings in firms that are substantial Michigan employers and actual or potential donors to the endowment. (Involvement in South Africa is immoral unless we get direct benefit from the immoral firm?)

Similar to Michigan is New Jersey, with two pending bills being supported as a package: one is absolute divestment, the other requires a preference for investing in New Jersey and replaces the prudence standard with an "acceptable" standard. As of June 1984, New Jersey's Investment Council found that of the 103 South Africa-involved firms having the investment characteristics allowing that $10.2-billion pension fund to invest in them, all but *five* were Jersey employers.[34] Of those 98 Jersey employers, 31 had more than *1,000* employees in the State and another seven had headquarters in the State. Moreover, a far larger proportion of the South Africa-involved firms' market value was also Jersey-linked, since the firms with headquarters or over 1,000 employees in-state included IBM, Exxon, GM, GE, Ford, Mobil, Texaco, Dow, DuPont, Johnson & Johnson, Merck, MMM, Raytheon, Revlon, Schering-Plough, Squibb, Union Carbide, United Technologies, Warner-Lambert, Westinghouse and Xerox. Such blue-chip *in-state* investments would virtually certainly not be divested, so the proponents of the two-bill package are pursuing only the thinnest symbolism. Even that will be tarnished when Jerseyans learn that behind the emotional intensity about avoiding immoral investments, the prudence standard was being repealed so that in-state investing could be stretched from blue-chip to back-scratch. (Is anything but symbolism as facade for conflict of interest, involved in such "divestment" "efforts"?)

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[33] Legis. Bill 553, signed Apr. 10, 1984.

[34] *All* of the 69 current holdings are Jersey employers.

(f) Maryland bars only deposits of state funds in banks lending to the South African Government,[35] a step far more easy for the State than the preceding ones, whatever its effectiveness.[36] Most local governments listed as having adopted divestment have taken only this step.

(g) Harvard, with an endowment of about $2.5 billion, has long been engaged in intensive grappling with the divestment issue, and as recently as October 1984 reiterated its 1978 refusal to adopt absolute divestment. Harvard has twice sold debt securities of banks lending to the South African Government. (Harvard's 1980 sale of $51 million in Citicorp debt instruments was one-third of all divestments by all universities since 1976.) But the University and President Bok separately have stated with unusual thoroughness the reasons for their believing that shareholder activism is the sounder route.[37]

> Harvard will consider divesting stock of a company with operations in South Africa when the company has substantially failed to implement reasonable ethical standards for its operations in South Africa, when persistent efforts over a substantial period of time to persuade the company to change its policies have failed, and where there is clearly no hope for improvement . . .
>
> We must distinguish between the failure of a good-faith effort to meet the standards of conduct we espouse and conduct which demonstrates such disregard of those standards that Harvard does not wish to associate itself with a company as a stockholder . . .
>
> Divesting shares in a company is, under our present policy, a last resort that bespeaks the failure of dialogue.

Harvard has a code that substantially follows the Sullivan Principles, and University officials engage in intense dialog with top management of any company not a signatory or lacking an acceptable compliance rating; the dialogs are reported on in extraordinary detail.[38]

The Harvard route of dedicated shareholder activism is the one recommended by the Rockefeller Commission Report, "Time Running Out."[39] That report flatly opposed divestment. advising institutions instead to act as active shareholders pressing corporations to (1) make no new investment in South Africa; (2) contribute to social development there at twice the rate of total charitable giving by the parent company in the U.S.; and (3) sign the Sullivan Principles and advance the Sullivan Principle's content and (at least as of the date of that Report, 1981) their monitoring.

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[35] Article 95, § 21; 1984 Laws, ch. 775.

[36] Even cash holdings, particularly in the form of commercial paper, are affected by absolute divestment. See Wagner, n. 24, at 20.

[37] See Statements of Harvard Corp. Committee on Shareholder Responsibility and President Bok, Harv. Univ. Gazette, Oct. 5, 1984, pp. 1, 8, 9; Corp. Committee Annual Report 1983-4, Harv. Gazette, September 1984 (supplement); Bok, Beyond the Ivory Tower: Social Responsibilities of the Modern University, chapters 10, 12 and conclusion (1982).

[38] See Corporate Committee Annual Report, supra n. 35, at 4-7 ("intensive dialogs" with Joy Manufacturing, Dun & Bradstreet, Pepsico [since then has signed Sullivan Principles], Phibro-Salomon; "other dialogs" with American International Group, G.D. Searle, Baker International, Dart & Kraft, Newmont Mining and nine other firms.

In 1984, New York's State Comptroller Edward V. Regan, as sole trustee of the $23 billion Common Retirement Fund, began an approach like Harvard's, carefully distinguishing among different companies on the basis of their different Sullivan Principle ratings—or non-rating—and communicating directly with the companies to encourage responsible conduct and further progress.

3. What will divestment accomplish? A moment's analysis reveals why blunderbuss divestment will not further antiapartheid goals in South Africa, but will at best (a) leave the problem in *status quo*, (b) probably make it worse, and (c) certainly hurt jobs here at home.

Consider what happens if, say, the D.C. pension fund stops buying stock or bonds of, say, Ford Motor or IBM or Johnson & Johnson. The securities of such big companies are instantly absorbed by other investors which, by definition, care less about the company's activity in South Africa. The stock price is unaffected. The company is not wholly unaffected—no company likes negative publicity. But even as symbol, divestment produces only a one-shot announcement of the sale or the blacklisting of that stock, and no more. In contrast, if the socially concerned institutional investor were to press proxy proposals about the firm's role in South Africa, there is a continuing stream of communication and pressure.

A particularly telling example: United Technologies is Connecticut's largest employer, certainly concerned about its relations at home. Within a month after Connecticut passed a statute putting prudent limits (see above) on its South Africa-related investing, United did not hesitate to acquire a substantial new subsidiary in South Africa.

But even if any significant U.S. company did respond to divestment of its securities by withdrawing from South Africa, what impact would that produce in South Africa?

First, even complete economic sanctions, far more severe than U.S. investors' selling their shares of U.S. firms, have a poor record of effectiveness. Second, the (British) Economist Intelligence Unit concluded in 1982 that South Africa's black neighbor nations were likely to be hurt more by any sanctions against South Africa than would the target itself.[40] Third, to come back to the mere withdrawal by U.S. firms, both experience and the current scene indicate ineffectiveness.

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[39] See above, n. 28.

[40] Freer & Samson, South Africa: Business Prospects Re-assessed, 93.

A particularly telling example: In 1977, Polaroid did withdraw, not because of divestment but because of sustained, forceful pressure by shareholders who kept their shares to press for change. Polaroid was deemed especially important to South Africa, because its then-unique cameras and film were used for apartheid's key operating tool, the passes. Impact of Polaroid's withdrawal? None. Polaroid supplies went in through Europe, with Polaroid unable to do anything about it.

Should Polaroid have stopped all sales abroad, to stop the flow to South Africa? (*Could* they if they tried?) In answering that, please consider not only South Africa or Polaroid stockholders—how about their U.S. employees?

As for U.S. companies with competitive products, that is, almost all firms: if they withdraw from South Africa, can one believe South Africa will be without the goods or services? Can one doubt that the major foreign presence in South Africa, the British, or else the Japanese, Germans, French, etc., will at once fill the gap, even if local firms could not?[41]

For example, U.S. firms' largest share of the South African market is in computers, where we account for 70% of all sales. Can one doubt that the firms doing the other 30%—let alone new entrants—would speed into any gap? And since our firms would withdraw only because of concern about apartheid, the remaining firms are by definition less socially sensitive, so apartheid would be stronger or, at best, unchanged. Leaving, at best, no impact on South Africa, but fewer jobs *back in America* for the withdrawn U.S. firms. Does anyone doubt, if U.S. firms reduce employment because of reduced exports or reduced profits brought home, whose jobs will go first?

Divestment might work if, as Congressman Solarz has been trying to accomplish, the major industrial nations work together on this. Until we get that—and major trade unions could help enormously—divestment's *only* impact will be some Americans feeling morally superior, and other Americans losing jobs.

But ineffective as divestment will be, it is bound to be costly.

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[41] A provocative prediction of what would happen if the South African economy actually were changed by multinationals' withdrawal, was given recently by Rowley Arenstein, the person imprisoned or "banned" by the South African Government longer than anyone else.

> "There is a big movement in the U.S. to break the economy of South Africa. I think that is stupid. Without investments, Africans will be pushed back into the countryside and the trade union movement would collapse. Even if you did get liberation, what kind of liberation would that be? You would starve like the people in Ethiopia or Mozambique."

(Wall St. Journal, A 'Banned' South African Speaks Out, and Faults Some Anti-Pretoria Tactics, Dec. 11, 1984, p. 33.

Another long-time critic of the Government, opposition member of Parliament Helen Suzman, says the determining factor inside South Africa has been

> "the steady upward movement into skilled occupations by blacks eventually giving blacks the muscle with which to make demands for shifts in power and privilege, backed up by the force of black urbanization."

(Washington Post, In South Africa, Washington Can Only Play a Bit Part, Dec. 9, 1984, at Cl, C2.)

IV. THE INVESTMENT IMPLICATIONS OF DIVESTMENT.

A. Key distinctions between small funds and large, and between operating funds and investment funds:

This is simple. The number of potential securities investments is vast, and even if your or my own personal investments were barred from 2/3 of those securities, we could still find a dizzying range of appropriate investments. But if we are trying to invest the California state pension funds with about $30 billion, or even a fund under $100 million, it is impossible to avoid investing mostly in large companies, whose securities are highly liquid, that is, readily bought and sold in large blocks; and even more important, companies large enough to withstand adverse events. Moreover, many people want massive public pension funds to invest some in small companies, and that is happening. But that "some" must remain a small proportion of those assets of $340 billion, or government funds would quickly own and control most firms. Therefore almost all institutional funds, public and private, limit themselves to a maximum of 5% of any firm's outstanding stock. Since 5% of a small firm is microscopic for a large fund, research and other transaction costs also limit investing directly in small firms. In short, big funds must have a broad spectrum of securities, which must include the issues of most big firms.

Unquestionably, for small funds even absolute divestment is easier than for large funds. However, it is equally unquestionable that for any institutional-size fund, such divestment means inescapably much higher transaction costs, major opportunity losses (e.g. IBM), increased risk because of the larger number of holdings in smaller stocks and also because of far less diversification. Therefore, such divestment means inescapably either imprudent overall risk or, to balance that, types of investments not usually used or not used so much because they produce lower overall returns. All of this being so, even for smaller funds total divestment is plainly imprudent.[42]

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[42] For several years, I focussed only on large funds because of my dealing with the divestment issue in the context of state pension funds. See, e.g., my testimony in January 1984, U.S. House Committee on the District of Columbia, Hearings on South Africa Divestment, 98th Cong. 2d Sess., 115, 121, 126. In addition, I have been in contact directly with a number of state pension fund trustees and investment officers, and in July 1984 testified in New Jersey's first round of legislative hearings on this. Therefore I had in mind only the overwhelming evidence that for such large funds, absolute divestment was close to impossible or enormously risky and/or enormously costly, and I failed to focus on what problem there is for smaller funds.

In November 1984, I testified as an expert witness for the Oregon State Investment Council in *Associated Students of the Univ. of Oregon v. Oregon Investment Council*, the suit to compel divestiture for the endowment's approximately $20 million. Testifying similarly was Wilshire Associate's Wayne Wagner, now managing $25 million in a South Africa-free index fund for the D.C. Retirement Fund. He, like me, had written focussing on large funds only. See Wagner, supra n. 24, at p. 15.

The Oregon trial court ruled on Dec. 5, 1984, that the Investment Council was acting lawfully in refusing to invest despite the resolution by the Board of Higher Education, since the relevant statute required prudent investing and absolute divestment, the court held, is not prudent. The case will be appealed.

One other distinction: for operating funds, e.g. a city's or a state's cash accounts, divestment is not the problem that it is for investment funds, for two reasons. First, operating funds are kept in such cash-equivalents as U.S. Government securities, bank certificates of deposit and perhaps commercial paper, for which any adjustment is much less.[43] There are more than enough banks, including large ones, not involved in South Africa.

B. What are the costs and risks for an institution adopting absolute divestment? The picture is clearest if we start with blunderbuss divestment, which imposes seven costs and/or risks on a fund.

Cost 1: Divestment shrinks the spectrum of possible investments to a remarkable extent. Of the Standard & Poor's 500 (the largest firms, constituting the vast bulk of the investments all institutional investors tend to use and which large institutions must use), the South Africa-free fund is barred from holding at least 47% of the market capitalization. Even that rests on limiting the blacklist to 229 companies, which now is unrealistically low.[44] One cannot respond "Well, that leaves 53% available," because the barred companies are far from fungible with the ones still available. The leading example is IBM, which has a market value of just under $70 billion: the next largest computer stock is Digital Equipment, with about $5 billion in market value. (When Wilshire constructed for the D.C. Retirement Fund a South Africa-free index, they replaced IBM with the next largest computer firm not already in the S&P: Commodore.) In one day, albeit a record day, IBM's price rise of $5.38 per share added $3.28 billion market value (June 20, 1984). Even within the 500 largest companies of which IBM is the largest, the smallest, Eagle-Picher, has a market value of about $220 million, 1/320th of IBM.

The barred stocks tend to be so large—IBM, Exxon, GM, GE, Citicorp, etc.—that of all 5,000 stocks in the broadest index (Wilshire's), even the limited blacklist of 229 firms accounts for 35% of total market value. If one tried to build a South Africa-free index of 500 stocks, replacing each barred stock in the S&P 500 with the next largest similar stock not already in the S&P 500, then at least 152 stocks with an aggregate market value of $554 billion (end-1983), would be replaced by 152 stocks aggregating $107 billion. The average market value of the barred stocks is $3.64 billion—for the alternates, $0.70 billion. The two largest restricted stocks, IBM and Exxon, are worth as much as all 844 issues on the American Stock Exchange. The 12 largest restricted stocks are worth as much as all 3,812 NASDAQ over-the-counter issues.

The best way to grasp how much investment power is lost by absolute divestment is to use an analogy suggested by Trinity Investment Management,[45] the firm managing just under $10 million of Michigan State U.'s $45-million South Africa-free endowment. Think of the universe of available stocks like a deck of cards. Rank all stocks into 13 categories of market value, like the 13 different cards. Every institutional investor gets 52 cards, except the South Africa-free funds which give up at least a third of the market value. Such a fund must play with only 30-35 cards against the other funds holding 52 cards. Worse yet, the SA-free fund has given up a disproportionate number of the big stocks or powerful cards: the SA-free deck of 30-35 cards lacks at least two aces, two kings, two queens, and two jacks. Willing to play that way?

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[43] But see Wagner, n. 36 *supra*.

[44] See discussion at III B. 1, above. The 47% figure is Wilshire Associates' based on values at end-November, 1984. The data in this Section B are from Wagner, *supra* n. 24 and from Trinity Investment Management, *supra* n. 26 and infra n. 45.

Consider concretely what opportunity costs can mean:

If we limit our review to the 27 largest stocks barred—all Aces or Kings in our poker anology—we see these opportunity costs:

Calendar 1979		*Calendar 1980*	
Standard Oil	+111.2%	Rockwell	+96.7%
Mobil Corp.	+70.4	Texaco	+74.5
Phillips Pet.	+58.6	Standard Oil	+71.2
Rockwell	+43.4	Exxon	+58.2
Dow Chemical	+37.4	Eastman	+52.9
S&P 500	+18.5%	S&P 500	+32.4%
Calendar 1981		*Calendar 1982*	
American Home	+40.8	Ford Motor	+132.1
J&Johnson	+14.1	Hewlett Packard	+85.2
American Express	+13.6	IBM	+77.9
Bristol Myers	+12.6	General Elec.	+73.3
Coca Cola	+12.5	General Motors	+72.1
S&P 500	−5.0%	S&P 500	+21.4%
Calendar 1983		*1984, through 7/31*	
Ford Motor	+65.4	Coca Cola	+41.1
Rockwell	+60.0	Bristol Myers	+10.2
Du Pont	+52.8	Boeing	+9.0
Exxon	+37.3	Exxon	+7.0
Dow Chemical	+36.3	American Home	+3.3
S&P 500	+22.5%	S&P 500	−6.0%

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[45] Investment Implications of South Africa Divestiture (Oct. 1984), "The Poker Analogy," at 5-8.

"Clearly, these are important winners—not only because they outperformed the S&P 500 so much in each of these six time periods, but also because they are all in the top 50 stocks in terms of market capitalization and/or average daily trading.

"To argue that the loss of the opportunity to buy and sell such big stocks—Aces and Kings in our poker analogy—will *not* inhibit performance simply doesn't make sense."[46]

Cost 2: Less information is available on the remaining stocks. Having lost so many of the biggest stocks, the portfolio is inescapably fuller of smaller stocks, which simply are not researched by as many analysts. The 152 barred S&P stocks were the subjects of an average 19.9 earnings estimates by broker-dealers; the 152 replacements were covered, on average, by 10.9 estimates. Having fewer estimates means greater difficulty in relying on research from the brokers normally selected for their good executions, since special efforts will have to be made to use firms providing the scarcer research. It also means the research is probably less reliable. These factors raise only transaction costs, but those too are real. One authority estimates that these research costs might triple normal costs.[47]

Cost 3: The portfolio is riskier because it is more dependent on smaller stocks. Generally, the larger the company the lower the risk, in two senses: First, a greater proportion of small companies go bankrupt. Second, smaller stocks tend to be far more volatile, which means the holder is at risk of the price being quite depressed before he can carry out a decision to sell, or quite inflated before he can buy enough. Of course there are stable smaller stocks and risky larger ones, but the generalization holds. Again, the two firms that are running SA-free funds and, being professionals rather than advocates, have measured the difference in risk levels, show significantly higher risk for the SA-free portfolio compared to the S&P 500. Michigan State U.'s South Africa-free investment manager found 16% greater risk in that firm's "SAF Universe" compared to the S&P (as of February 1983, looking back over the years 1975-82). But that "SAF Universe" earned only a thin margin more than the S&P, 15.4% versus 14.9% (average annual).[48] The District of Columbia's South Africa-free index manager found 8% more risk as of June 1984, plus 3% more diversification risk plus unquantifiable further strategic risk (see below, Cost 4).

True, a diverse portfolio of higher risk stocks should produce higher returns, a "risk premium." Otherwise, no one would ever venture beyond the blue chips. But will the premium compensate for the risk assumed? And is the higher risk level prudent? The D.C. Retirement Fund has been advised, its index manager testified, that its risk level in SA-free securities is such that it may need to consider changing other investments, i.e., to lower the total portfolio's risk level by holding more utility stocks or bonds or short-term Treasury securities. Such lower-return holdings wipe out the risk premium from the small stocks and, considering the experienced superiority of stocks over fixed-income investments and similar superiority of growth stocks over utilities, the portfolio will almost surely suffer weaker overall returns than without absolute divestment.

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[46] *Id.* at 14.

[47] Trinity, *supra* n. 45, at 12.

[48] Trinity, *supra* n. 26, at 8, 9.

Remember, 1% more returns means 10-15% more pension benefits or a related drop in costs, etc.

Cost 4: The portfolio is riskier also because it is much less diverse. If you have a crystal ball, you don't want to bother with diversification—as Will Rogers would say, just buy the stocks that are going up. But if you lack a crystal ball, the prudent way to cope with the uncertain future is to diversify. Consider the major market sectors, and how many of them and how much of each the SA-free fund cannot buy (using market value of the S&P 500 stocks in each group as of June 1984):

Industrial equipment : 99%
Banks : 97%
Photography : 93%
Chemicals : 87%
Drugs : 87%
Conglomerates : 85%
Office equipment : 84%
Autos : 85%
Int'l oils : 76%

Again risk rises, sharply. Wilshire Associates found that in addition to the 8% rise in market risk because of the dependency on smaller stocks, there was 3% more diversification risk, plus—

> strategic risks that are more difficult to quantify. For example, during late 1983 and early 1984, the only sector to show positive price appreciation was Energy. Energy stocks, however, are heavily affected by divestiture restrictions. Divestiture thus leads to an incomplete exposure to opportunities. The result is a diversification loss beyond the manager's control and a risk that must be borne by the fund.

As a matter of law, recently a British judge held it imprudent for the National Coal Mineworkers' Pension Fund to avoid, as the union trustees insisted, further investing in oil or overseas:[49]

> [T]he broad economic arguments of the [union trustees] provide no justification for the restrictions that they wish to impose. Any possible benefits from imposing the restrictions that would accrue to the beneficiaries under the scheme (as distinct from the general public) are far too speculative and remote. Large though the fund is, I cannot

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[49] *Cowan v. Scargill*, Weekly Law Reports (Aug. 10, 1984, at 501, 521-2) (Chancery Div., Sir Robt. Megarry, V.-C.).

> see how the adoption of the restrictions can make any material impact on the national economy, or bring any appreciable benefit to the beneficiaries under the scheme. . . . In any case, the question is one of excluding a very large sector of the market, and preventing diversification into investments in other countries which may do well at a time when the British market is depressed; and I can see no possible benefit in such an exclusion, especially in the case of a very large fund with highly skilled investment expertise.

Cost 5: Smaller stocks have less liquidity. This is a negative double-whammy. Because smaller stocks are more volatile, investors want to be able to move quickly, certainly if events call for selling but also when trying to accumulate a position. However, precisely because these stocks are smaller and draw much less institutional interest, their normal trading volume is even smaller compared to the big stocks than their relative market capitalization. Recall, for example, that IBM is worth about 320 times as much as the 500th largest company, Eagle-Picher. But IBM's average daily trading volume is $155,000,000 and Eagle-Picher's is $100,000: IBM trades over *1,550* times as much. Even if one structured a South Africa-free portfolio with as big stocks as possible, as was done hypothetically for New Jersey's pension fund, the median number of days needed to sell out a holding rose from 17 for the current portfolio to 51 or 31, depending on the hypothetical chosen. Comparing the most illiquid holding that fund has to what it hypothetically would have, the maximum days needed to buy a position rose from 172 to 3,160.[50]

The rise in trading costs—not merely the minor matter of commissions, but the major matter of market impacts—according to an analysis of actual trades by a Wells Fargo officer,[51] would rise by one-quarter for a small fund ($3.8 million—from 0.8% of price, to 1.0%), by one-half for a middle-size fund ($38 million—from 1.0% of price to 1.5%), and over three-fifths for a large fund ($380 million: from 2.3% of price, to 3.7%). Those trading cost rises are believed to be understated for an active manager operating a SA-free fund, since the thin markets in those stocks are likely to react especially sharply to orders from a firm with a good performance record and with a reputation accordingly.

Cost 6: Managing the portfolio will cost more. The portfolio will have to be managed separately. This may mean merely an extra management fee (because of the information costs and unique attention required), but it may mean finding a new manager. For example, when the University of Wisconsin endowment adopted total divestment, the major firm managing that fund refused to continue. Even if a fund doesn't have to go through the delay and cost of finding a willing manager (and though a survey for the D.C. Retirement Board found half of the managers surveyed saying they would not accept such an assignment, of course many willing managers are bound to emerge), a great many managers use investment approaches that could not be employed for a portfolio barring so many major investment opportunities. Inability to use a significant proportion of good management firms and standard investment styles—Wilshire estimates 31% of management styles or managers—may itself prove costly in lost opportunity, even if this is not readily quantified.[52]

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[50] Trinity, *supra* n. 45, at 20.

[51] Loeb, Trading Costs: The Critical Link Between Investment Information and Results, Fin'l. Anal. J. (May-June 1983); relied upon, adjusted to the figures in text above for buys or sells instead of "round-trips," by Wagner, *supra* n. 24, at 17-18.

Last, Cost 7: How hold the fiduciaries accountable? All the above costs and risks and uncertainties, are certain. If after divestment the fund does poorly or, to use the more pertinent measure, does less well than funds of similar size and nature, how would one decide whether that is the fault of the divestment or poor management? Given the high trading costs, it is artificial to measure an actively managed South Africa-free portfolio against a South Africa-free index. Then use only passively managed, i.e., indexed investing? In some markets, active management will be vastly superior, in some not. Over the long run, we have no data on how a divested index would do. Isn't that in itself a preclusive degree of uncertainty for any prudent fiduciary?

Given such evidence, blunderbuss divesting seems good only for masochists and soap-box simplifiers. What of divesting only non-signatories of the Sullivan Principles, or signatories with lower-tier compliance ratings? If, like Connecticut, the barred companies are those below the top two compliance ratings, then only 15% of the S&P 500 is lost, compared to the 47% that absolute divestment bars.[53] However, Nebraska's barring all but top-compliance firms makes a striking difference. Nebraska loses almost all drug firms as well as, this year, Ford and GE *et al.*[54] In short, Nebraska's line is more prudent than total divestment, but Nebraska public employees and taxpayers will bear a substantial burden for going as far as their statute does, and given the ineffectiveness of their step, here again is plain imprudence.

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[52] Wagner, *supra* n. 24, at 19.

Emergence of willing managers is in process. Pensions & Investment Age, Social restrictions make new markets for advisers, Dec. 10, 1984, p. 24.

Note that the investment implications analyzed here focus almost exclusively on equities. Impact on cash equivalents was noted, Wagner, *supra* n. 36; and the severe impact on bonds is also treated in Wagner, *supra* n. 24, at 19. The New Jersey Investment Council has calculated that because so much of the corporate bond market would be barred, U.S. Government securities would have to be used much more, leading to a loss of about $2.5 million annually for each $1 billion in a bond portfolio.

[53] Valuation by Wilshire Associates using data as of end-November, 1984.

[54] As stressed by Arthur D. Little Inc., compliance monitor for the Sullivan Principles, it is wrong and possibly unfair to judge a company on a single year's rating as distinct from its pattern over several years. Economic circumstances external to a firm may cause changes relative to other firms in other industries. For example, both Ford and GM were top-category compliers before the October 1984 Report. The top two categories are both "passing." For fairness and also in light of concern for a fund's manageability and investment implications, not only is Nebraska's narrowness imprudent, but any fund that makes determinative distinctions between the different categories of compliance should be less rigidly mechanical than Nebraska and Connecticut, and should allow some evaluation case by case.

The prudent fiduciary will adopt an approach like Harvard's or perhaps Connecticut's.

C. The Sullivan Principles

Four times since their beginning in 1977, the Principles have been amplified from six brief statements to 36 more specific goals concretizing the Principles, and two additional commitments. The Principles are:

> Principle 1—Nonsegreation of the Races in All Eating, Comfort, Locker Rooms, and Work Facilities;
>
> Principle 2—Equal and Fair Employment Practices for All Employees;
>
> Principle 3—Equal Pay for All Employees Doing Equal or Comparable Work for the Same Period of Time;
>
> Principle 4—Initiation and Development of Training Programs that Will Prepare Blacks, Coloureds, and Asians in Substantial Numbers for Supervisory, Administrative, Clerical, and Technical Jobs;
>
> Principle 5—Increasing the Number of Blacks, Coloureds, and Asians in Management and Supervisory Positions;
>
> Principle 6—Improving the Quality of Employees' Lives Outside the Work Environment in Such Areas as Housing, Transportation, Schooling, Recreation, and Health Facilities.

(The full current Principles, working objectives and additional commitments appear in an Appendix to this paper.)

U.S. corporate signatories total 128 as of October 1984, down from 148 two years earlier because 29 were dropped in 1983, but the total number of companies reporting has not dropped. Six of the 29 dropped have been reinstated and a few new ones added.

The program began with 12 major firms including Control Data, Ford, GM, IBM and Union Carbide. Reverend Leon Sullivan, pastor of Philadelphia's Zion Baptist Church since 1950 and a leader in the civil rights movement, in 1971 became the first black on GM's Board. There, from the outset he argued that GM should withdraw from South Africa. But in 1975 in South Africa, he was urged—particularly by black union leaders—to advocate not withdrawal but rather marshalling the resources of U.S. and other multinationals "into true forces for change. . . .

> It had been talked about, but never genuinely tried. After deep reflection and much prayer, I decided to make such an effort, despite the overwhelming odds against its

> success. . . . Persuading leaders of U.S. companies to accept the approach was far from easy. I embarked on a lobbying crusade which required two years of extensive travel and numerous meetings. On March 1, 1977, despite the refusal of many companies to become involved, the initial Statement of Principles, signed by 12 major U.S. companies, was announced.[55]

Today, the signatories employ 65,000, about 74% of the workforce of U.S. companies in South Africa. In addition, the consortium of 10 South African-owned firms working toward the same goals since 1979, employ far greater numbers such as Barlow Rand's over 750,000. There are also European and Canadian codes but the European firms, mostly British, lag behind the Sullivan signatories and their "progress is miserably slow, Japanese companies are doing even less than the Europeans."[56]

What the Sullivan signatories have accomplished, and how much they have stepped up their efforts, is detailed in the next section. Reverend Sullivan is neither patient nor willing to settle for yesterday's goals. In the beginning in 1977, there were merely the six Principles and an effort to expand the number of signatories—no reporting, no compliance rating. Annual reporting was begun despite the failure of Sullivan's effort to secure aid from foundations: the signatories were assessed ($1,000 to $7,000 a year, depending on amount of worldwide sales). Since 1978, Arthur D. Little, Inc. annually evaluates the signatories' progress, based on questionnaires which since 1982 are verified in designated parts by each firm's certified outside accountants. The latest questionnaire was 55 pages; many signatories must submit separate questionnaires for separate subsidiaries. The original lack of compliance ratings was replaced first by three categories, then more; now there are 10. The annual evaluations involve both quantitative and qualitative points; the maximum possible is 60—1984's top complier received 52.

Each year, new requirements have been added. In 1983, for the first time a number of signatories—29 of the then-total 148—were dropped, partly for failure to report (nine never had), partly for failure to pay the assessments, partly for unsatisfactory progress. None of the 29 had been in the top two categories in the preceding two years.

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[55] Sullivan, Agents for Change: The Mobilization of Multinational Companies in South Africa, 15 Law. & Pol. Int'l. Bus. 427, 428-9 (1983). This section rests on that source; on Communications Task Group of the Sullivan Signatory Companies, Meeting the Mandate for Change (1984); on Eighth Report, *supra* n. 23; and on the testimony of Sullivan Principles Administrator Daniel Purnell in *Associated Students of the Univ. of Oregon* v. *Oregon Investment Council*, Lane County Circuit Court, Nov. 30, 1984.

[56] Sullivan, *id.* at 435.

In January 1985, six South African employer groups issued a statement challenging the Government's racial segregation policies. The groups said that the private sector is committed to pushing for six major political and economic changes, including "meaningful political participation for Blacks." These employers, representing about 80% of the country's workers, include the Afrikaanse Handelsinstitut made up of Afrikaner business executives and relied on heavily by the governing National Party. Wall Street Journal, Employers Assail Racial Separation in South Africa, Jan. 9, 1985, p. 31.

In 1984, for the first time the signatories are called upon to deal more directly with laws and customs impeding social and political justice:

> Increased Dimensions of Activities Outside the Workplace
>
> - Use influence and support the unrestricted rights of Black businesses to locate in the urban areas of the nation.
> - Influence other companies in South Africa to follow the standards of equal rights principles.
> - Support the freedom of mobility of Black workers to seek employment opportunities wherever they exist, and make possible provisions for adequate housing for families of employees within the proximity of workers' employment.
> - Support the ending of all apartheid laws.

In 1985, the Ninth Report on compliance will decrease attention on goals that have been accomplished in order to focus on new objectives, concentrating especially on areas of greatest need, "particularly those on which the companies can have a considerable impact in the stimulation of social change."[57]

Sullivan writes:[58]

> Critics admonish that the Principles are not the solution to the South African controversy, and I wholeheartedly agree. Many thrusts are needed if a solution is ever to come. The Principles are only one . . . I plead for a halt to bank loans and new corporate investment, until political equality for blacks is realized. It must nevertheless be argued that the Principles have had some influence favoring political change, and that they will continue to do so. Help a person gain economic rights and you will foster gains in his political rights. Equality at the workplace and massive education programs for black and non-white workers ultimately will affect every aspect of their lives, public and private. . . . Simply put, the evidence reveals that the Principles are a conduit from the workplace through which the workers learn to address broader societal issues, including political rights. . . .
>
> The Principles are not an academic response designed to advance the views of those who are proponents of either investment or divestment. To the contrary, the Principles are a pragmatic policy, based upon the most judicious engagement of available resources, and are intended to improve the quality of life, to help bring justice to unliberated people, and to help build a peaceful, free South Africa for everyone. The ultimate purpose of the Principles is to contribute toward the elimination of apartheid. The enormous resources and influence of U.S. companies present a critical mass which can have a profound catalytic effect favoring fundamental change in South Africa. With the help of Almighty God, I still believe attainment of these goals is possible.

D. The morality of divestment

Even if the costs and risks are high, and even if there is also almost no likelihood of blunderbuss divestment's accomplishing anything, still it is defended on the ground that it is the only moral position. It is neither the only moral one nor even moral.

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[57] Eighth Report, *supra* n. 23, at 4.

[58] *Supra* n. 55, at 440-443.

First, there is the deepest difficulty in predicting which route is more likely to bring the changes we all seek—either responsible presence in South Africa, specifically including educating, training and promoting blacks, or the other route, simple withdrawal. Very few of us have the competence to judge that, and even persons with great knowledge of South Africa and of history can only speculate more knowledgeably. Remember that when Hitler took power in 1933, the German Communists rejoiced because soon the situation would come apart and they would take power. Soon they were dead.

Given the difficulty of predicting which route is more likely to produce constructive change, certainly it is high error and high arrogance to label "immoral" *responsible* involvement with South Africa. In such uncertainty, neither route toward change can be called immoral.

Second, there is no evidence that divestment has had any impact at all. Consider in contrast what the Sullivan signatories have already accomplished:[59]

1. End of all discrimination in all factories and on all company property, by all signatories.
2. Equal pay for equal work, by all signatories.
3. Minimum wages "well above the appropriate local minimum economic living level" paid by all but three signatories.
4. Instead of only hourly wages for blacks, all signatories have common medical, pension and insurance plans.
5. Substantially higher pay increases for black employees than for white, every year from 1979 to 1983.
6. Blacks in signatories' supervisory and management categories: 21.2% in 1983, up from 16.7% in 1979 although down from pre-recession 1981's figure of 25.2%.
7. In 1983, 6,942 blacks in signatories' training programs, up from 1982's 5,544. Another 14,585 in their job advancement training, up from 1979's 4,221. Another 35,523 in scholarship and tuition refund programs, up from 1979's 5,077. And spent on education and training for black *non*-employees in 1983, $2,805,468 for 22,154 people, up from 1982's $2,194,146 for 21,841 people.
8. Total contributions by signatories to educational and training programs for blacks, $13,278,000 in 1983, up from 1978-9's $2,740,000.
9. Total contributions outside the business to improve health care and living conditions, $4,098,600.
10. Total contributions—education/training, health/welfare, and black entrepreneurship, $22,418,000 in 1983, up from $3,632,000 in 1978.
11. "Adoption" by signatories of 200 schools, up from 96 in 1980 although down in dollars.
12. Similar European and Canadian codes adopted and three South African company codes. In 1979, 10 South African companies, led by Barlow

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[59] Sullivan signatories' results are drawn from sources in n. 55, *supra*.

Rand (over 750,000 employees) and including another major conglomerate, formed a consortium for similar action. A number of their member companies, all South African-owned, are recognizing "unregistered" labor unions as well as registered ones, an unprecedented step among such companies.

13. Efforts in Western Europe and South Africa to enlist more companies in the codes.

Given such results, it is even more certainly wrong to call responsible involvement immoral, and even more probable that this route is the more moral because more effective and demonstrably life-enhancing.

Third, since it is wrong to discriminate on bases that ignore merit, absolute divestment is immoral. Kellogg was the first foreign—not just U.S.—company to recognize and bargain with a black union.[60] Ford was the first foreign company to promote blacks to be shop stewards. Control Data is a way-out-front leader in education, including the most modern skills.[61] Another U.S. firm was the first to bring about desegregated housing. Sullivan signatories have ended discrimination on company property and some have gotten desegrated housing into use. (Sometimes imaginative management is amazing. One factory supervisor, ordered to end segregated dining rooms, tore down the wall between them but immediately replaced it with a complete trellis and planted thick ivy covering the trellis. Soon he thinned the ivy, soon after let it wither, and soon after that he removed the trellis.)

Are such companies the same as Boeing, which will not sign the Sullivan Principles, or Baker International, which was dropped as a signatory and is on record that its only obligations are to its stockholders and customers? Is it moral to ignore the difference between those who care and try, and those who do not? New Jersey's Assembly Speaker Alan Karcher dismisses the difference, saying the Sullivan Principles remind him of the sign over the entry to Nazi concentration camps: "Work Will Set You Free." Would such a viewer also see no difference between Eichman and Ike, since both presided over killing?

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[60] Lane Kirkland declared "aiding South African unions the most effective means of promoting equality." And the head of South Africa's largest black labor federation, Phirosaw Camay, said the most effective way to pressure South Africa to end apartheid is a campaign of "selective divestment." He "noted that unions within his country are divided on strategy, with some advocating total disinvestment, some opposing it, and others saying it should be aimed only at firms abusing workers." Both speakers addressed a strategy conference on labor in South Africa sponsored by AFL-CIO African-American Labor Center and the A. Philip Randolph Educational Fund. Washington Post, Labor Urged to Pressure South Africa, Jan. 11, 1985, p. A15.

[61] Control Data's Chairman William C. Norris sent most state pension investment officers in December 1983 his paper on "South Africa: A Case for Selective Investment," detailing Control Data's efforts. They also ran full-page ads in South Africa, e.g.:

"Elias Mudau should have been an engineer. He had talent. . . . At the age of 10, Elias designed a bicycle. Now he rides one.

"Elias represents a tragedy—not just for himself, but for South Africa. . . .

"Control Data is meeting the need for training and education with PLATO. This is a computer-based training system, developed by an international team of educationalists, and used in more than 20 countries around the world. . .

"Call Ron Mukdge . . . or write to Control Data HQ . . . Sandton . . . "

Fourth, is it immoral or only hypocritical to divest but, as a Michigan university did, then assure a divested company (Dow Chemical, a Michigan firm which raised the question after being divested) that its annual contributions were still entirely welcome?

Is it moral to treat South Africa as the only serious problem? Anyone who has discussed divestment knows the ritual arguments about Libya, USSR, Amin's Uganda, Ethiopia, etc. But, it is said, South Africa is unique because it enshrines racism in law. Regrettably, many countries do. Liberia, for example, a country with special ties to the U.S., allows only blacks to be citizens, only citizens to own land, etc.

Last, absolute divestment is immoral because it certainly risks, and almost certainly inflicts, injury on people who may depend on a pension fund's doing well, or who are students relying significantly on an endowment—people whose interest is enshrined in trust obligation. Advocating the diversion of funds in trust for the advancement of education or retirement security is wrong. Inflicting financial loss on the people for whose benefit the funds were established in reliance on fiduciary faithfulness is abuse of trust.

What is right? The most careful exploration we have, by the Rockefeller Commission, made three recommendations: First, no new investment. Second, major giving for social development by companies involved in South Africa. Third, the Sullivan Principles. That is, we must "keep saying to the companies, we must do more, more, more . . . we must move faster, faster, faster. . . ."[62] If ultimately dialog fails because of corporate disregard for this terrible problem, then divest. We should join efforts like the one (led by President Bok) that now has 300 nonwhite South Africans in U.S. universities. We should join efforts to make sure our own Government is not passive.

All that is harder work than blunderbuss divestment. The moral prudent person will meet the challenge.

E. *A postscript on the constitutionality of absolute divestment: Are state and local funds adopting it violating the Commerce Clause and exclusively Federal responsibility for foreign affairs?*

A Congressional Research Service analysis in January 1984[63] presents the constitutional questions raised by absolute divestment. I am confident that a statute like Massachusetts' would be held invalid if subjected to a properly framed lawsuit.

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[62] Rev. Sullivan to the signatories, Nov. 9, 1983.

[63] Eig, Analysis of Whether the D.C. South Africa Investment Act Violates the Commerce Clause and the Exclusive Federal Power to Conduct Foreign Relations (Am. Law Div., Jan. 31, 1984).

States can regulate interstate commerce to promote such local interests as health and safety, and sometimes even local economic interests, so long as no federal interest stands in the way. The question is whether the state statute, on balance, promotes legitimate local concerns without interfering (or interfering unduly) with national concerns. Absolute divestment does not promote local economic concerns, since it does not reflect concern for the stability of the investments: it singles out one nation's possible instability, ignores all other potentially unstable nations and all other types of investment risk, and ignores the extent to which a company would be affected even if its South African investment were lost. Absolute divestment statutes or practices are not as defensible as nondiscriminatory laws barring state agencies and funds from supporting racial discrimination, because it applies to corporate involvement in a specified nation regardless of discrimination elsewhere and regardless of the corporation's actual conduct.

When it is foreign commerce that a state's action affects, there is a greater burden on the state in the balancing between local and national interests.

Absolute divestment statutes or practices are vulnerable first because their purpose involves the affairs of another nation and our foreign relations with that nation and with other interested nations. Purpose is a recognized factor given weight in the balancing.[64] Second, if many or even several jurisdictions passed such statutes, there would be a significant impact on interstate commerce at least because of securities transactions; and if the divestment had its intended effect even on one corporation, clearly there would be an impact on foreign commerce. Third, the diversity of approaches to divestment (see section III. B. 2. above) is inconsistent with the national interest in uniform regulation of commerce. Fourth, the proliferation of targets of divestment—South Africa of course, but also Namibia (Boston and the Oregon endowment), Zimbabwe (the Oregon endowment), Iran (Connecticut) and Northern Ireland (Massachusetts on military involvement there and New York City's pending ban against firms discriminating against Catholics there)—is both inconsistent with national uniformity, and highlights the extent to which these efforts reflect not local concerns but varying views of what our foreign policy should be. Fifth and last, various Federal statutes—the 1976 Act curbing arms sales; action that has been taken under the 1979 Export Administration Act; and special treatment of Export-Import Bank aid for some South Africa-involved trade and investment—indicate Federal regulation of the subject probably preempting the field even if no other factors were present.

The exclusive Federal power to conduct foreign relations has been held to bar even state statutes reflecting greater local interests and less impact on foreign nations (or on our relations with them) than absolute divestment. The leading case, *Zschernig* v. *Miller* of 1968,[65] struck down an Oregon statute requiring its probate courts, before allowing inheritance by someone abroad—essentially, in Russia and its satellites—to find that U.S. citizens would be able to inherit from an estate in that legatee's country, and that that country would not confiscate the inheritance going to the legatee there. While the Court's tests raise the usual questions of just where lies the line, absolute divestment falls on the wrong side. The state interest in probate is traditionally recognized, but the state interest in changing a foreign nation's practices is nil. The impact on a foreign nation if an occasional individual there may be denied a legacy,[66] is tiny or less. The impact on a foreign nation from an effort to sever American economic involvement with it is potentially massive. And the impact on the Federal Government's ability to conduct foreign relations if state governments are also trying to affect them is clear. Further, the interest in not allowing a state to provoke retaliation from abroad—e.g., cutting off our platinum, chrome, etc.—is obviously a national interest that must be controlled at the federal level.

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[64] See e.g., *Zschernig* v. *Miller*, 389 U.S. 429, 437-8, 442 (1968).

Note that absolute divestment focuses on South Africa itself, while Connecticut's more prudent course focuses on the conduct of the particular corporations. Here, then, in the constitutional vulnerability of absolute divestment, is yet another indication of its inferiority to steps like Connecticut's.

V. A WORD ON FOUNDATIONS, CHURCHES AND CHARITIES, AND ENDOWMENTS

In the context of divergent investing, few words need be added about these funds.

Foundations, whose total assets are about $47 billion, are hard to generalize about. Many have purposes sufficiently defined that the label "divergent" remains applicable. Some repose a broader authority in their trustees so that it is wrong to say that the pursuit of any new goals via investing would be "divergence." To the extent that a foundation has a defined goal or range of goals, e.g., promotion of education or the environment, then the considerations pertinent to divergent investments by pension funds are essentially applicable. To the extent that a foundation's goals are more loose-knit, the only caution concerns the efficiency and effectiveness of pursuing non-financial goals by choice of investments. Pax World's mutual fund (above, section II) is an example of well-intentioned investing that advances one advisory firm more than anything else—*if* anything else. More significantly, the Ford Foundation built up substantial experience showing that the most effective route is investing to maximize the funds available to pursue desired goals, and then pursuing those goals by direct support. Need more be said?

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[65] *Ibid.*

[66] The Court in *Zschernig* expressly noted how minor and incidental was the impact on foreign nations, but still held the statute invalid. And this was in the face of an amicus brief from the Department of Justice defending the state statute.

Churches and other charitable organizations are, for these purposes, substantially similar to foundations, with one important difference. Foundations' board membership tends to be more stable than those other organizations' boards. The more new trustees, the more need to re-educate about investing, prudent or otherwise—and the more likelihood of year-in, year-out discussions of which non-financial goals to pursue and how to pursue them. That in itself seems an argument for investing for strictly financial goals and pursuing non-financial goals with the enhanced means made available by prudent investing (subject of course to the non-injurious overlay of considerations like no alcohol-tobacco or no blatant law-breakers).

University endowments, with about $30 billion, are unique. No one has treated this matter as fully as Harvard's President Bok.[67] An informal and incomplete statement of his position is that "A university should in a way compatible with its mission try to make a constructive effort to solve the problems of the world" instead of relying on "negative ineffective ways like fiddling around in stock."[68] Under a program Bok began and now chairs, 160 non-white South Africans were in American universities in 1983-84, up from six in the year the program began, 1979-80 (a similar number is here in a companion program). Those 160 are here for four-year undergraduate degrees, some for master's degrees. They are selected by a bi-racial committee in South Africa, headed by Bishop Tutu.

A fuller statement of Bok's view that universities are different in crucial ways is to be found in his article reprinted in this monograph; see especially pages 100-102.

VI. CONCLUSION

Institutional investors' assets are huge, with pension funds making the others seem tiny. But these assets are not, as Gary Trudeau put it, "just sitting there." Pension liabilities dwarf the assets, and the protection of retirement security—or the endowments' goal of advancing education and the foundations' varied goals—are all not only socially responsible but truly noble endeavors. How well those objectives are met depends in large measure on the investment performance of their funds.[69]

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[67] *Supra*, n. 37.

[68] Harvard Crimson, The Bok Alternative, p. F-5, Commencement Issue 1983.

The varied efforts to divert these funds from their crucially important goals, whether to promote local investing or avoid investing abroad, or to promote a special clearly desirable social goal like environmental improvement or small business or low-income housing, or to discourage clearly undersirable conduct like sustained and substantial violation of law or uncaring and irresponsible involvement in South Africa, come from a variety of motivations. Some advocates of divergent investing are as well-intentioned as people can be, although almost none of those advocates even think about the goals they may be interfering with, and even fewer have the patience to consider the investment implications of their effort. Other advocates may or may not be so well-intentioned, but knowingly put their own goals ahead of the social and legal trust obligation to use other people's money only for the noble purposes for which the fund was created. Such struggle among competing noble goals is natural in a pluralist society. But there are also some advocates who (sad to say) are usually the most powerful of the divergent pressures on these funds—particularly on public pension funds—who use the facade of helping housing or in-state development to enrich their own firms or their power in politics or in a union, and perhaps their campaign coffers as well.

Confusion, let alone deception, about precisely what is really being advocated usually can be averted only by following Sergeant Friday's practice of getting the facts. If a particular divergent investment or policy will not injure the fund and does not reflect merely the personal view of the trustees, then objection to going forward is either foolishly narrow-minded (as if decisions must be exclusively financial) or else plain foolish. But that "if" is a crucial one. Too often the only investment aspect considered is the likely returns, sometimes measuring them relative to inappropriate comparisons, more often ignoring the other essential aspects of returns: relative risk, relative liquidity, and implementation costs.

Without the persistence to bring out the facts and the patience for full analysis, the legal and moral obligation to abide by the trust power over other people's money and interests will not be honored. Honoring that

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[69] To improve the investment performance of such funds, which do not all do as well as they should and are not as accountable as they should be, involves several problems that still need work. See, e.g., my efforts (as task force chairman, editor and part author) in Twentieth Century Fund, Abuse on Wall Street: Conflicts of Interest in the Securities Markets (1980); and my Should Pension Funds be Used to Achieve "Social" Goals, 119 Trusts & Estates 10 (Sept.), 27 (Oct.) and 26 (Nov.) (1980); Why Mutual Funds are Top Performers (Client as Culprit), Pensions & Investment Age, July 20, 1981, at 13 and editorial at 10; Why Have Pension Funds Performed So Poorly? (unpublished talk, May 1982); Picking Investment Managers, Pensions & Investments, Apr. 24, 1978, at 61 and editorials at 8; Government Finance Officers Ass'n, Resources in Review: New Directions in Investment and Control of Pension Funds, July 1984, p. 20 and id., New Data on Pension Funds, Sept. 1984, p. 22 (book reviews).

called to account under the Privileges and Immunities Clause."[48] The Court's reasoning was as follows:

"Our decision in *White* turned on a distinction between the city acting as a market participant and the city acting as a market regulator. The question whether employees of contractors and subcontractors on public works projects were or were not, in some sense, working for the city was crucial to that analysis. The question had to be answered in order to chart the boundaries of the distinction. But the distinction between market participant and market regulator relied upon in *White* to dispose of the Commerce Clause challenge is not dispositive in this context. The two Clauses have different aims and set different standards for state conduct.

"The Commerce Clause acts as an implied restraint upon state regulatory powers. Such powers must give way before the superior authority of Congress to legislate on (or leave unregulated) matters involving interstate commerce. When the State acts solely as a market participant, no conflict between state regulation and federal regulatory authority can arise. . . . The Privileges and Immunities Clause, on the other hand, imposes a direct restraint on state action in the interests of interstate harmony. . . . This concern with comity cuts across the market regulator-market participant distinction that is crucial under the Commerce Clause. It is discrimination against out-of-state residents on matters of fundamental concern which triggers the Clause, not regulation affecting interstate commerce. Thus, the fact that Camden is merely setting conditions on its expenditures for goods and services in the marketplace does not preclude the possibility that those conditions violate the Privileges and Immunities Clause. . . .

"The fact that Camden is expending its own funds or funds it administers in accordance with the terms of a grant is certainly a factor—perhaps the crucial factor—to be considered in evaluating whether the state's discrimination violates the Privileges and Immunities Clause. But it does not remove the Camden ordinance completely from the purview of the Clause."[49]

The Privileges and Immunities argument played no part in the Memorandum of the Washington Council of Lawyers[50] or the brief of the State of Michigan.[51] Reason: *United Bldg. & Const.* is of later vintage. But it was upon the first four cases that both the memorandum and brief largely based their position: that the Commerce Clause simply does not apply because disinvestment statutes are proprietary rather than regulatory. Certainly, obligation takes some knowledge and some work. When the challenge is increased by having to fend off soap-box simplifiers, well-intentioned or not, it also takes savvy, durability and even courage. Generations of experience of countless faithful and prudent fiduciaries doing their best to meet their obligations make clear that the challenge will be met.

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[48] ___. U.S.___ , 104 S. Ct. at 1029.
[49] ___ U.S.___ , 104 S. Ct. at 1028-1029.
[50] Supra, note 10.
[51] Surpa, note 19.

APPENDIX

The Sullivan Principles

Statement of Principles
of U.S. Firms with Affiliates
In the
Republic of South Africa

PRINCIPLE I: *Non-Segregation of the races in all eating, comfort and work facilities*

Each signator of the Statement of Principles will proceed immediately to:

- Eliminate all vestiges of racial discrimination.
- Remove all race designation signs.
- Desegregate all eating, comfort and work facilities.

PRINCIPLE II: *Equal and fair employment practices for all employees*

Each signator of the Statement of Principles will proceed immediately to:

- Implement equal and fair terms and conditions of employment.
- Provide non-discriminatory eligibility for benefit plans.
- Establish an appropriate and comprehensive procedure for handling and resolving individual employee complaints.
- Support the elimination of all industrial racial discriminatory laws which impede the implementation of equal and fair terms and conditions of employment, such as abolition of job reservations, job fragmentation, and apprenticeship restrictions for Blacks and other non-whites.
- Support the elimination of discrimination against the rights of Blacks to form or belong to government registered and unregistered unions and acknowledge generally the rights of Blacks to form their own unions or be represented by trade unions which already exist.
- Secure rights of Black workers to the freedom of association and assure protection against victimization while pursuing and after attaining these rights.
- Involve Black workers or their representatives in the development of programs that address their educational and other needs and those of their independents and the local community.

PRINCIPLE III: *Equal pay for all employees doing equal or comparable work for the same period of time*

Each signator of the Statement of Principles will proceed immediately to:

- Design and implement and wage and salary administration plan which is applied equally to all employees, regardless of race, who are performing equal or comparable work.

- Ensure an equitable system of job classifications, including a review of the distinction between hourly and salaried classifications,
- Determine the extent upgrading of personnel and/or jobs in the upper echelons is needed, and accordingly implement programs to accomplish this objective in representative numbers, insuring the employment of Blacks and other non-whites at all levels of company operations.
- Assign equitable wage and salary ranges, the minimum of these to be well above the appropriate local minimum economic living level.

PRINCIPLE IV: *Initiation of and development of training programs that will prepare, in substantial numbers, Blacks and other non-whites for supervisory, administrative clerical and technical jobs.*

Each signator of the Statement of Principles will proceed immediately to:

- Determine employee training needs and capabilities, and identify employees with potential for further advancement.
- Take advantage of existing outside training resources and activities, such as exchange programs, technical colleges, and similar institutions or programs.
- Support the development of outside training facilities, individually or collectively—including technical centers, professional training exposure, correspondence and extension courses, as appropriate, for extensive training outreach.
- Initiate and expand inside training programs and facilities.

PRINCIPLE V: *Increasing the number of Blacks and other non-whites in management and supervisory positions.*

Each signator of the Statement of Principles will proceed immediately to:

- Identify, actively recruit, train and develop a sufficient and significant number of Blacks and other non-whites to assure that as quickly as possible there will be appropriate representation of Blacks and other non-whites in the management group of each company at all levels of operations.
- Establish management development programs for Blacks and other non-whites, as needed, and improve existing programs and facilities for developing management skills of Blacks and other non-whites.
- Identify and channel high management potential Blacks and other non-white employees into management development programs.

PRINCIPLE VI: *Improving the quality of employees' lives outside the work environment in such areas as housing, transportation, schooling, recreation and health facilities*

Each signator of the Statement of Principles will proceed immediately to:

- Evaluate existing and/or develop programs, as appropriate, to address the specific needs of Black and other non-white employees in the areas of housing, health care, transportation and recreation.

- Evaluate methods for utilizing existing, expanded or newly established in-house medical facilities or other medical programs to improve medical care for all non-whites and their dependents.
- Participate in the development of programs that address the educational needs of employees, their dependents, and the local community. Both individual and collective programs should be considered, in addition to technical education, including such activities as literacy education, business training, direct assistance to local schools, contributions and scholarships.
- Support changes in influx control laws to provide for the right of Black migrant workers to normal family life.
- Increase utilization of and assist in the development of Black and other non-white owned and operated business enterprises including distributors, suppliers of goods and services and manufacturers.

Increased Dimensions of Activities Outside the Workplace

- Use influence and support the unrestricted rights of Black businesses to locate in the Urban areas of the nation.
- Influence other companies in South Africa to follow the standards of equal rights principles.
- Support the freedom of mobility of Black workers to seek employment opportunities wherever they exist, and make possible provisions for adequate housing for families of employees within the proximity of workers employment.
- Support the recension of all apartheid laws.

With all the foregoing in mind, it is the objective of the companies to involve and assist in the education and training of large and telling numbers of Blacks and other non-whites as quickly as possible. The ultimate impact of this effort is intended to be of massive proportion, reaching and helping millions.

Periodic Reporting

The Signatory Companies of the Statement of Principles will proceed immediately to:

- Report progress on an annual basis to Reverend Sullivan through the independent administrative unit he has established.
- Have all areas specified by Reverend Sullivan audited by a certified public accounting firm.
- Inform all employees of the company's annual periodic report rating and invite their input on ways to improve the rating.

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DISINVESTMENT—THE CONSTITUTIONAL QUESTION

by Albert P. Blaustein*

I. INTRODUCTION

In justifiable outrage against patterns of human rights violations throughout the world, American states, cities, universities and both public and private funds are now engaged in the process of disinvestment[1] from firms doing business in the offending nations.

At year's end 1984, at least half of the states of the United States (plus the District of Columbia) had introduced legislation compelling South African disinvestment[2]—and such laws had been enacted in Connecticut, Maryland, Massachusetts, Michigan and Nebraska. In addition, New York City, Boston, Philadelphia and possibly another dozen or so major municipalities had passed ordinances to that effect—"with officials in Chicago, Detroit, Los Angeles and Seattle apparently contemplating comparable moves."[3]

Nor is South Africa the only target. Disinvestment laws and ordinances have been enacted with regard to the Soviet Union (Michigan), Iran (Connecticut), Northern Ireland (Massachusetts), Namibia (Boston and Oregon endowments) and Zimbabwe (Oregon endowment). Poland is a secondary target in proposed legislation in Kansas, and Massachusetts is considering the addition of Sri Lanka to its prohibitions.

Whether disinvestment will achieve its human rights objectives—or, indeed, be counterproductive—is discussed elsewhere in this volume. Ditto

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[1] In this context, the word "disinvestment" is used interchangeably with the terms "divestment" and "divestiture." Technically speaking, however, "'disinvestment' more correctly applies to the act of withdrawing money that has previously been invested [while] 'divestment' applies to the more active procedure of ridding oneself of something, including certain stocks in a portfolio." Chettle, The Law and Policy of Divestment of South African Stock, 15 Law and Policy in Int'l. Bus. 445 (1983), n. 1.

[2] The April, 1984, *Legislative Update* of the American Legislative Exchange Council reported on more than 66 South African disinvestment bills pending in 22 states. Legislative action in 26 states and the District of Columbia is compiled in Appendix II of the New Jersey Public Hearings before the Assembly State Government, Civil Service, Elections, Pensions, and Veteran's Affairs Committee on Assembly Bills 1308 and 1309, held in Trenton, N.J., September 24, 1984. (State Actions on Legislation Concerning Divestment of State Funds in the Republic of South Africa, pp. 72x-77x.)

[3] Olson, *Introduction* to this volume, p. vii and n. 1.

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the inevitable cost and potential harm to affected beneficiaries. The conflict between disinvestment legislation and laws prescribing the obligations and duties of trustees is likewise analyzed elsewhere. Nor will this chapter review the validity of disinvestment statutes, ordinances and activities under the state constitutions.

The broad question under consideration here is the constitutionality of disinvestment laws, in general,[4] under the Constitution of the United States.

II. CONCLUSION

Disinvestment laws are of such doubtful constitutionality that legal counsel should *presently* advise against their passage and, where enacted, caution against their enforcement.

Such conclusion is not predicated upon professional theory or law review commentary, although neither can be excised from the thinking on the subject. The unconstitutionality argument is real. It has been raised. And as long as it remains unresolved, disinvestment activities are better consigned to the proverbial back burner.

Here is a compendium (with comments) on the uncertain status of the constitutionality of disinvestment laws:

1. The unconstitutionality arguments have been publicly advanced—and well publicized.

   a. Undoubtedly the most scholarly statement is that of Prof. Gordon B. Baldwin of the University of Wisconsin Law School, based on his analysis of the Wisconsin disinvestment statute.[5] This is incorporated in a student note in the Wisconsin Law Review.[6]

   b. The most comprehensive study is that of Larry M. Eig, which was prepared for the Congressional Research Service (CRS) of the Library of Congress.[7] This is predicated upon the District of Columbia Act and is included in the 1984 Congressional hearings on resolutions to "reject" that act.[8]

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[4] Likewise not under consideration are possible constitutional disabilities based on the *differences* between the various disinvestment statutes. The Connecticut, Massachusetts and Nebraska statutes, for example, deal with state pension funds, the Maryland statute is concerned with bank deposits and the Michigan statute with university endowments. *See*, Schotland, p. 48.

[5] Wis. Stat. ¶36.29(1) (1975).

[6] Note, Constitutionality of the No Discrimination Clause Regulating University of Wisconsin Investments, 1978 Wis. L. Rev. 1059, authored by Kevin Wade Guynn.

[7] Analysis of Whether the District of Columbia South Africa Investment Act (D.C. Act 5-76) Violates the Commerce Clause of the Constitution and the Exclusive Federal Power to Conduct Foreign Relations. Congressional Research Service, The Library of Congress, Jan. 31, 1984. Prepared by Larry M. Eig, Legislative Attorney, American Law Division.

[8] South Africa Divestment. Hearings and Markups before the Subcommittee on Fiscal Affairs and Health of the Committee on the District of Columbia, House of Representatives, 98th Cong., 2d Sess. on H. Con. Res. 216 and H. Res. 372, Ser. No. 98-14, Jan. 31 and Feb. 7, 1984, pp. 72-107. These resolutions were, "To reject the District of Columbia Act 5-76 to Prohibit the Investment of D.C. Funds in Financial Institutions and Companies Making Loans to or Doing Business with the Republic of South Africa or Namibia."

c. Certainly the most publicized is the article by John H. Chettle on "The Law and Policy of Divestment of South African Stock."[9] Mr. Chettle is the Director, North and South America, of the South Africa Foundation.

None of these three studies is conclusive. As aptly pointed out in a memorandum by the Washington Council of Lawyers on the District of Columbia Act ". . . the CRS Memorandum never actually concludes that the South African Investment Act is unconstitutional—it only states that such argument could be made."[10] (Whether a CRS memorandum could or should resound more conclusively is another type of question; this one did not.)

The Chettle statement is overly brief. It does present the major arguments and does list the major precedents, but it wants of adequate analysis. And the memorandum of the distinguished Professor Baldwin has three infirmities: (a) its public presentation has been filtered through the law review editing process on its way to publication; (b) its arguments could be distinguished as being solely applicable to the Wisconsin statute and the Wisconsin facts; and (c) it was written back in 1977, prior to some important Supreme Court decisions which some think controlling and at least essential to analyzing the issue. These are discussed below under the heading, "Participant or Regulator."[11]

2. Opinions of attorneys general and other government counsel are in short supply. Letters requesting their views—officially or unofficially—were sent by this author to all fifty of the state attorneys general on January 11, 1985, but no responses of any significance were received.[12]

On the public record are the following—either noncommital, inconclusive or sketchy, but recognizing and acknowledging constitutional problems:

a. Now being widely circulated is a U.S. Department of Justice letter of January 4, 1984,[13] containing (and sustaining) this sentence: "The question you pose is a novel one for which no direct precedent seems to be available." While the letter states and restates the point that the

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[9] 15 Law and Policy in Int'l Bus. 445 (1983). Pages 515 to 525 are devoted to "Constitutional Issues."

[10] The Washington Council of Lawyers Memorandum, also referred to as the memorandum from the Lawyers Committee on Civil Rights, was submitted "in concert" with the prestigious Washington law firm of Arnold and Porter. Supra, Note 8, at 239-42.

[11] See *infra*, pp. 80-84 and accompanying notes.

[12] From Wisconsin came the 1978 Department of Justice opinion letter directed to the president of the University of Wisconsin system, supra n. 14; and from Iowa came the 1984 governor's veto message, infra n. 89. Nebraska reported that it had done some research but "have not at this time issued any formal opinion of the subject." One attorney general said that it was against the policy of his office to respond to such inquiries. The other half-dozen responses said that the question had not arisen.

[13] Letter from U.S. Department of Justice, Office of Legal Counsel, Office of the Deputy Assistant Attorney General, signed Robert B. Shanks, to Ms. Kathleen Teague, Executive Director, American Legislative Exchange Council, 418 C Street, N.E., Washington, D.C. 20002, January 4, 1984.

Department is not authorized to provide legal opinions or legal advice save to the president and heads of executive departments, it does provide (in its own phrase) "a few general observations." And such observations suggest a number of constitutional "arguments."

b. Two opinions were rendered by the Wisconsin attorney general in 1977 and 1978, but these are likewise inconclusive and of little value as precedent. And they have a cloudy history.[14] While they sustain the constitutionality of the Wisconsin disinvestment law, they rest largely on the proposition that "the statute will not place an unlawful burden on interstate commerce since the percentage of total dollars in interstate commerce that is controlled by the Board of Regents is so small."[15]

c. The best reasoned governmental (or quasi-governmental) statement is the one submitted as the position of the District of Columbia at the January 1984 Congressional Hearings on the District's disinvestment act.[16] This was the memorandum of the Washington Council of Lawyers.[17] And while it is a thoughtful summary, it must be classified a brief (four-page) adversary document, responding to the Congressional Research Service analysis.[18] It is not and is not meant to be an opinion sustaining constitutionality.

d. The "opinion" of Michigan's attorney general is in a document of advocacy (a brief) in current litigation. See point 3.

3. The matter is before the courts, and a precedent on point is expected. Cross motions for summary judgment on the constitutionality issues surrounding disinvestment have been submitted to the Michigan Circuit Court[19] and it is wise for legal counsel to await their resolution.

As explained in the University of Michigan brief:

> "By enacting 1982 PA 512, the Michigan Legislature, amended the [State] Civil Rights Act. . . to prohibit public educational institutions from making or maintaining after April 1, 1984, equity or stock investments in organizations operating in the Republic of South Africa. . . [or] in the Union of Soviet Socialist Repubics. . . . The Regents seek a declaratory judgment that Act 512 violates both the Michigan and United States Constitutions."[20]

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[14] The Wisconsin attorney general construed the statute twice. The first time was in an informal opinion submitted to the secretary of the Board of Regents on May 19, 1977. The attorney general was subsequently requested to "reconsider his opinion in light of the constitutional questions raised by Professor Baldwin's memorandum." The second construction was in the formal opinion submitted to the President of the University of Wisconsin System on January 31, 1978. 67 Wis. Op. Att'y Gen. (1978) Supra, note 6, at 1061-62.

[15] Id. at 1062.

[16] Supra, note 8.

[17] Supra, note 10.

[18] Supra, note 7.

[19] The Regents of the University of Michigan v. The State of Michigan. In the Circuit Court for the County of Ingham, Michigan, File No. 83-50309-C2.

[20] Brief of the Regents of the University of Michigan, pp. 1-2. (Footnotes omitted.)

There is also current litigation in Oregon[21] but the court decided in a ruling on December 4, 1984, that it "did not find it necessary to reach . . . the constitutional issue." However, the court pointed out that such issue was "preserved for the record . . . [and] it can be urged on the Appellate Court and they [sic] may find it dispositive."[22] As of this writing findings of fact and conclusions of law were still awaited.

Resolution of the constitutional uncertainties is a laudable goal—for everyone included on all sides of the disinvestment question. It cannot be done via any opinion of an attorney general—no matter how well reasoned and how divorced from the inevitable charges that it is "political." And there is no point in the preparation of fifty such opinions, plus the opinions of municipal counsel. The wheel needs not reinvention.

There is also ample reason for the nation as a whole to await the outcome in one or a few jurisdictions. In the oft-quoted words of Justice Brandeis:

> "It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."[23]

Admittedly, this approach gives small solace to those who see in disinvestment a means to combat human rights violations in South Africa, the Soviet Union, Iran, Zimbabwe, etc. How long *will it take* (for example) for the Michigan trial court to reach a decision? How long *it will* take for the completion of the inevitable appeals!

But the disinvestment supporters would seem to have no alternative. Laws on disinvestment are *probably* unconstitutional and are at the very least of questionable constitutionality.

III. THE CONSTITUTIONAL ARRAY

Involved here is the tension between the Tenth Amendment on one hand and the Commerce Clause and the conduct of foreign relations on the other. Involved here is the Supremacy Clause and the doctrine of federal preemption.

On its face, a divestment statute is constitutional since it involves "fiscal management of state funds, a function which is not specifically delegated to the federal government by the United States Constitution."[24] This conforms to the dictate of the Tenth Amendment: "The powers not delegated to the

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[21] Associated Students of the University of Oregon et al. v. Oregon Investment Council et al. In the Circuit Court of the State of Oregon for the County of Lane, Case No. 78-7502.

[22] Ruling of the Hon. George J. Woodrich, Tuesday, December 4, 1984. Transcript of proceedings by the Official Court Reporter, p. 5.

[23] Dissenting in New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932). Justice Holmes expressed similar views, referring to "social experiments . . . in the insulated chambers afforded by the several states. Dissenting in Truax V. Corrigan, 257 U.S. 312, 344.

[24] Supra, note 6, at 1060.

United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

But this power is not unlimited. State discretion and state conduct, pursuant to the Supremacy Clause,[25] is unconstitutional when it conflicts with the Commerce Clause. It is Congress which has been given the power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."[26]

Disinvestment laws may also run afoul of the Privileges and Immunities Clause: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."[27]

Nor may the state interfere with the federal foreign relations power. All agree that there are inherent limitations upon the power of states in matters of foreign affairs that go beyond the Commerce Clause.

IV. PARTICIPANT OR REGULATOR

Whether the enactment of a disinvestment law is an exercise of state sovereignty protected by the Tenth Amendment is not easy to answer. But whatever the ultimate conclusion, the threshold determinant is whether the state is acting as a *participant* (in a *proprietary* capacity) or as a *regulator* (in a *governmental* capacity).[28]

The black letter law is that state and local governments are not restrained by the Commerce Clause when they engage in commercial transactions as market participants rather than as regulators. Regardless of the burden on interstate commerce (so the theory runs) the market participant is immune from the Commerce Clause. Indeed, the Commerce Clause is not even implicated. The participant is investing its own market funds; it is spending its own money. This is not the business of the federal government.

This is all very new law. It sounds strange to ears (and years) attuned to *Gibbons* v. *Ogden*[29] and its myriad progeny, interpreting the Commerce Clause broadly and expansively. The new cases give credence and credibility to the Tenth Amendment; they give new recognition to dual federalism. But do they cover the issue at hand? Are disinvestment laws proprietary, representing only the acts of participants? Is there immunity from interstate commerce strictures? Does immunity from the reach of interstate commerce apply equally to foreign commerce? Will immunity from the Commerce Clause extend to immunity under the Privileges and Immunities Clause? And even if the participant-regulator distinction is made and disinvestment laws are held to be in the participant-proprietary category for the Commerce Clause, may such laws still conflict with the federal government's supremacy in foreign relations?[30]

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[25] Art. vi, cl. 2. "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

[26] Art. I, ¶8, cl. 3.

[27] Art. IV, ¶2.

[28] See Wells and Hellerstein, the Governmental-Proprietary Distinction in Constitutional Law, 66 Va. L. Rev. 1073 (1980). "The small body of case law under the commerce clause consistently holds that a state's action in its proprietary capacity gives rise to no constitutional objection.' At p. 1122.

[29] 22 U.S. (9 Wheat.) 1 (1824) See especially 22 U.S. at 34.

There are no cases directly on point. On this all will agree. Likewise, all will agree as to the five cases to be parsed in arguing the applicability of precedent and judicial thought on this aspect of the constitutionality issue. The cases are: (1) *Hughes* v. *Alexandria Scrap Corp.*, 1976;[31] (2) *National League of Cities* v. *Usery*, 1976;[32] (3) *Reeves, Inc.* v. *Stake*, 1980;[33] (4) *White* v. *Massachusetts Council of Const. Employers*, 1983;[34] and (5) *United Building and Construction Trades Council of Camden County and Vicinity* v. *Mayor and Council of the City of Camden, 1984.*[37]

The seminal case is *Hughes* v. *Alexandria Scrap Corp.*[36] Its facts, holding and essential language are well-stated in the Congressional Research Service report:[37]

> "There the Supreme Court upheld a Maryland statute that clearly favored in-state businesses in the payment of State bounties to scrap processors for each vehicle abandoned in Maryland that they destroyed. There appeared to be no question that favoring State Businesses in the expenditure of State funds for the bounties had the effect of reducing the flow of abandoned car hulks in interstate commerce to out-of-state businesses, who could not pay as high a price for the hulks because of difficulties in obtaining Maryland bounties. Nevertheless, the Court held that the Commerce Clause did not apply. According to the Court, Maryland did not interfer[e] with the national functioning of the interstate market either through prohibition or burdensome regulation. 426 U.S. at 806. Rather it had entered into the market itself as a purchaser, in effect, of a potential article of interstate commerce. *Id.* at 806, 808. The court concluded that [n]othing in the purposes animating the Commerce Clause prohibits a State . . . from participating in the market and exercising the right to favor its own citizens over others. *Id* at 810."[38]

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[30] See F. Frankfurter, The Commerce Clause Under Marshall, Taney and Waite, at 40 (1964—first published 1937).

[31] 426 U.S. 794 (1976).

[32] 426 U.S. 833 (1976).

[33] 447 U.S. 429 (1980).

[34] 460 U.S. 204 (1983).

[35] ___ U.S.___, 104 S. Ct. 1020 (1984).

[36] 426 U.S. 794 (1976).

[37] Supra, n. 7.

[38] Supra, n. 7 at 19-20. It is also reprinted in the House of Representatives hearings, supra, note 8, at 92-93.

National League of Cities v. *Usery*[39] dealt with amendments to the federal Fair Labor Standards Act extending wage and hour provisions to almost all employees of States and their political subdivisions. Striking down these amendments, the Court held that Congress may not, pursuant to the Commerce Clause, "directly displace the State's freedom to structure integral operations in areas of traditional governmental functions."[40]

In *Reeves* v. *Stake*,[41] the Supreme Court (in a 5-4 vote) upheld South Dakota's refusal to sell cement produced by a state-operated plant to non-South Dakotans. Such preferential treatment of its own citizens was sustained on the ground that the state was acting in a proprietary capacity. Here was the crucial language:

> "[T]he Commerce Clause responds principally to state taxes and regulatory measures impeding free private trade in the marketplace. There is no indication of a constitutional plan to limit the ability of the states themselves to operate freely in the free market."[42]

These cases are followed in *White* v. *Massachusetts Council of Construction Employers*.[43] There the Court considered the validity of an executive order of the Mayor of Boston requiring that at least 50 percent of all jobs on construction projects (funded in whole or in part by city funds) be filled by bona fide city residents. The executive order was held to be "immune from scrutiny under the Commerce Clause because Boston was acting as a market participant rather than as a market regulator."[44]

United Bldg. & Const. v. *Mayor & Council of Camden*[45] dealt with a municipal ordinance which required that at least 40 percent of the employees of contractors and subcontractors working on city construction projects be Camden residents. On the basis of the *White*[46] case, the Commerce Clause challenge to the Camden ordinance was abandoned, but not so the contention that the ordinance was a violation of the Privileges and Immunities Clause.[47] Remanding the case for necessary findings of fact, the Court came to this conclusion:

> "In sum, Camden may, without fear of violating the Commerce Clause, pressure private employers engaged in public works projects funded in whole or in part by the city to hire city residents. But that same exercise of power to bias the employment decisions of private contractors and subcontractors against out-of-state residents may be

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[39] 426 U.S. 833 (1976).

[40] 426 U.S. at 852.

[41] 447 U.S. 429 (1980).

[42] 447 U.S. at 437.

[43] 460 U.S. 204 (1983).

[44] Quoted in United Bldg. & Const. v. Mayor & Council of Camden, ___ U.S. ___, 104 S. Ct. at 1025.

[45] ___ U.S. ___, 104 S. Ct. 1020 (1984).

[46] Supra, n. 43, 460 U.S. 204 (1983).

[47] U.S. Constitution, Art. IV, ¶2.

such argument can be made based on an expansive reading of these cases. Certainly, the dicta are attractive if not the facts. But . . .

All four cases simply stand for the proposition that a state can protect its own citizens—i.e. can discriminate in favor of its own citizens—in matters proprietary rather than regulatory in *interstate commerce*. And they hold it is proprietary when the state is in the process of spending its own money.

Of course, a state can spend its own money. But nowhere is there a judicial statement that a state has an *unlimited* right to spend as it pleases. *United Bldg. and Const.*,[52] for example, has now invoked the Privileges and Immunities Clause. Further, even if the four cases deny limits in *interstate commerce*, they are certainly not holdings applicable to *foreign commerce*. On the contrary, *Reeves*[53] makes a point of that distinction in what will undoubtedly become an oft-quoted footnote:

> "We have no occasion to explore the limits imposed on state proprietary actions by the "foreign commerce" clause. . . . We note, however, that Commerce Clause scrutiny may well be more vigorous when a restraint on foreign commerce is alleged."[54]

And even assuming that the broad scope of these cases would provide immunity from the constitutional mandate on foreign commerce, disinvestment laws would still interfere with the conduct of foreign affairs. How could they not? They represent official statements of disapproval of the internal policies of foreign sovereign nations. Their very purpose is to affect American foreign policy; their passage is specifically geared to pressure the State Department to do something about apartheid or Soviet human rights violations.

V. INTERSTATE COMMERCE

Assuming (and a valid assumption it is) that the participant-regulator distinction does not provide immunity from the Commerce Clause here, inquiry must first be directed to the "negative" aspects of the Clause, the so-called "dormant commerce clause." Here is the rule: the absence of Congressional action on a matter does not free the individual states to regulate as they will.[55]

The best statement on this point is made in one of the two key cases on the Commerce Clause objection, *A & P Tea Co.* v. *Cottrell*.[56]

"We begin our analysis by again emphasizing that '[t]he very purpose of the Commerce Clause was to create an area of free trade among the several

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[52] ___ U.S.___, 104 S. Ct. 1020 (1984).

[53] 447 U.S. 429 (1980).

[54] 447 U.S. at 438, n. 9.

[55] See for example, Raymond Motor Transportation, Inc. v. Rice, 434 U.S. 429, 440 (1978) and City of Philadelphia v. New Jersey, 437 U.S. 617, 623 (1978).

[56] 424 U.S. 366 (1976).

States.' . . . And at least since *Cooley* v. *Board of Wardens*, 12 How. 299 (1852), it has been clear that 'the Commerce Clause was not merely an authorization to Congress to enact laws for the protection and encouragement of commerce among the States, but by its own force created an area of trade free from interference by the States. . . . [T]he Commerce Clause even without implementing legislation by Congress is a limitation upon the power of the States.' "[57]

However, this does not mean that the States may *never* legislate upon an aspect of commerce that is within the Congressional regulatory power. *A & P Tea Co.* v. *Cottrell* also contains this language:

> "It is no less true, of course, that under our constitutional scheme the States retain broad power to legislate protection for their citizens in matters of local concern such as public health, . . . and that not every exercise of local power is invalid merely because it affects in some way the flow of commerce between the States. . . . Rather, in areas where activities of legitimate local concern overlap with the national interests expressed by the Commerce Clause—where local and national powers are concurrent—the Court in the absence of congressional guidance is called upon the make delicate adjustment of the conflicting state and federal claims, . . . thereby attempting the necessary accommodation between local needs and the overriding requirement of freedom for the national commerce."[58] (Citations omitted.)

But how—and when—does the Court make that "delicate adjustment" or "necessary accommodation," or, in other words, apply a balancing test. This was not clearly set forth in *A & P Tea Co.* v. *Cottrell*. In its application, however, the Court struck down a Mississippi regulation that required reciprocity in the sale of milk and milk products produced in other states. The mandatory character of the regulation was held to be violative of the Commerce Clause.

The case which provides the guidelines is *Pike* v. *Bruce Church, Inc.*[59] Here also, on the basis of the Commerce Clause, a state directive was declared unconstitutional. At issue was an order prohibiting an Arizona company from shipping its cantaloupes outside the state unless packed as directed by the official charged with enforcing the Arizona Fruit and Vegetable Standardization Act.

Pike v. *Bruce Church, Inc.* teaches that there are two threshold criteria before a court can assess the burden which the state law might impose upon interstate commerce: 1) the state promulgation must credibly advance a legitimate local public interest; and 2) the state promulgation may not discriminate against interstate commerce. Only then can the courts consider whether the promulgation is a tolerable burden on interstate commerce or whether the state's interest can be promoted as well with lesser impact on interstate activities.[60] In other words, only then can the balancing test be used.

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[57] 424 U.S. at 370-371.

[58] 424 U.S. at 371. See Congressional Research Service analysis, supra, note 7 at 9-10, supra, note 8 at 82-83.

[59] 397 U.S. 137 (1970).

The actual words of *Pike* v. *Bruce Church, Inc.* bear repetition: "Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. . . . If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate actvities. Occasionally the Court has candidly undertaken a balancing approach in resolving these issues, . . . but more frequently it has spoken in terms of "direct" and "indirect" effects and burdens.[61] (Citations omitted.)

Based on these rules/tests/criteria, the disinvestment statutes run afoul of the Commerce Clause. Of course, human rights can be deemed a legitimate concern of commerce. But are discriminatory practices in South Africa, the Soviet Union, Iran, etc., a matter of "local public interest"?[62]

Nor could it be concluded that the state disinvestment laws have only an incidental effect on interstate commerce. Too much money is at stake; investment portfolios of state pension funds, universities, etc., are not inconsequential.

Yes, there are cases which can be parsed to extract enough factual snippets and sufficient dicta to formulate legal argument. But there is no holding which sustains any state action remotely resembling disinvestment. And the weight of authority and judicial analogy is on the side of unconstitutionality.

VI. FOREIGN COMMERCE

What has been said relative to interstate commerce can be said even more forcefully in regard to foreign commerce. This was not always so (or may not have been always so)—at least up to 1979, and at least by way of dicta.

For example, the words of Chief Justice Taney: "The power to regulate commerce among the several States is granted to Congress in the same clause, and by the same words, as the power to regulate commerce with foreign nations, and is coextensive with it."[63] And here is Justice Field fifty years later: "The power to regulate commerce among the several States was granted to Congress in terms as absolute as is the power to regulate commerce with foreign nations."[64]

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[60] This analysis is used in the University of Michigan brief, supra, note 20, at 37. See also McCarroll, "Socially Responsible Investment of Public Pension Funds: The South Africa Issue and State Law," 10 N.Y.U. Rev. of Law and Social Change 407, 425 (1980-81).

[61] 397 U.S. at 142.

[62] See Huron Cement Co. v. Detroit, 362 U.S. 440, 443 (1960) and Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945) cited with approval in Pike v. Bruce Church, Inc., 397 U.S. at 142. See also City of Philadelphia v. New Jersey, 437 U.S. 617, 623 (1978).

But the important holding is *Bob-Lo Excursion Co.* v. Michigan,[65] "cited as principal authority for the view that states are not absolutely precluded from enacting regulations which affect foreign commerce."[66] Yet this was an unusual case which thirty years later the Supreme Court in *Japan Line, Ltd.* v. *County of Los Angeles*[67] could limit to its peculiar facts.[68]

Defendant in *Bob-Lo* was a Michigan corporation which transported passengers from Detroit to its amusement park on a nearby Canadian island. Having refused passage to a black woman, defendant was prosecuted and convicted under the Michigan Civil Rights Act. On appeal, defendant took the position that the Michigan enactment constituted state regulation of foreign commerce in violation of the Commerce Clause.[69] While agreeing that "appellant's transportation of its patrons is foreign commerce"[70] the Supreme Court nonetheless upheld the state statute and affirmed the conviction.

There are four significant differences between the application of the Michigan Civil Rights Act in *Bob-Lo* and the application of disinvestment laws affecting South Africa, *et al.*:[71]

1) "[T]he appellant conducted 'foreign commerce' in name only. The sole business on the island was the amusement park, and it catered solely to American patrons. . . . the island was 'economically and socially . . . an amusement adjunct of the city of Detroit.'"[72]

2) Michigan's Civil Rights Act was in conformity with both federal legislation and Canadian enactments.

3) The Michigan statute affected Michigan residents almost exclusively.

4) Since Canadian law was harmonious with the Michigan enactment, "Relations with foreign nations" would not be "adversely affected by applying Michigan's statute to these facts."[73]

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[63] License Cases, 5 How. (46 U.S.) 504, 578 (1847).

[64] Pittsburgh & Southern Coal Co. v. Bates, 156 U.S. 577, 587 (1895).

[65] 333 U.S. 28 (1948).

[66] Lansing, "The Divestment of United States Companies in South Africa and Apartheid," 6 Neb. L. Rev. 304, 316 (1981), citing Recent Decisions, 6 Tex. Int. L. F. 134, n. 84 at 140-41 (1970).

[67] 441 U.S. 434 (1979).

[68] 441 U.S. at 456.

[69] 333 U.S. at 34.

[70] Ibid.

[71] See also analysis in Lansing, supra, note 66, at 316-17.

[72] 441 U.S. at 456 and 333 U.S. at 35.

[73] 333 U.S. at 40.

But South Africa, *et al.* are (1) not adjuncts of American states or cities; (2) disinvestment laws are not in conformity with the laws of the nations where disinvestment is being sought; (3) state and city disinvestment laws and ordinances do not only affect their own citizens—they affect foreign citizens; and (4) since the human rights objectives of American states and cities are so different from those of South Africa, the Soviet Union, Iran, etc., our national relations with those nations would necessarily be affected by disinvestment laws.

This is why the 1979 Court in *Japan Line, Ltd.* took such pains to argue that "appellee's reliance" on *Bob-Lo* is "misplaced" and to conclude that *Bob-Lo* "is consistent with both the analysis and the result" of the latter case.[74]

The controversy in *Japan Line, Ltd.* involved an ad valorem tax that California had imposed on the shipping containers of a foreign corporation. The State argued that the tax was constitutional since it met the four-fold requirements of *Complete Auto Transit, Inc.* v. *Brady*.[75] (1) the Containers had a "substantial nexus" with California because some of them are present in that state at all times; (2) the tax was "fairly apportioned" since it was levied only on the containers' "average presence" in California; (3) the tax did not "discriminate" since it fell "evenhandedly" on all personal property in the State; and (4) it was "fairly related to the services provided by" California.[76]

The Court agreed: "We may assume that, if the containers at issue here were instrumentalities of purely *interstate commerce, Complete Auto* would apply and be satisfied, and our Commerce Clause inquiry would be at an end."[77] However, "[w]hen construing Congress' power to 'regulate Commerce with foreign Nations,' a more extensive constitutional inquiry is required."[78] Again: "Foreign commerce is preeminently a matter of national concern. . . . Although the Constitution . . . grants Congress power to regulate commerce 'with foreign Nations' and 'among the several States' in parallel phrases, there is evidence that the Founders intended the scope of the foreign commerce power to be the greater."[79]

Then, applying the "additional tests that a tax on foreign commerce must satisfy,"[80] the Court struck down the California statute. The Court concluded that the tax had resulted in "multiple taxation of the instrumentalities of foreign commerce" and prevented the "Nation from speaking with one voice' in regulating foreign trade."[81]

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[74] 441 U.S. at 456.
[75] 430 U.S. 274 (1977).
[76] 441 U.S. at 445.
[77] Ibid. (Emphasis supplied.)
[78] 441 U.S. at 446.
[79] 441 U.S. at 448 (cited cases and footnotes omitted).
[80] 441 U.S. at 451.
[81] 441 U.S. at 451-52.

That foreign commerce requires "a more extensive constitutional inquiry" is (as noted earlier)[82] reaffirmed in the important participant-regulator case of *Reeves* v. *Stake*: "We have no occasion to explore the limits imposed on state proprietary actions by the foreign commerce Clause. . . . We note, however, that Commerce Clause scrutiny may well be more rigorous when a restraint on foreign commerce is alleged."[83]

It could be and has been argued that *Japan Line, Ltd.* "is inopposite because it involved a state taxation scheme which is *clearly* regulatory, not proprietary, in nature."[84] Some court in the future, ruling on the constitutionality of disinvestment laws might distinguish *Japan Line, Ltd.* and so conclude. But it is certainly not clear! On the contrary, it is extremely doubtful.

In support of the proprietary nature of disinvestment laws is the contention that such statutes are facially valid since they do not deal directly with foreign commerce. The State is only determining the criteria for the securities which it purchases with its own funds. In doing so, it is not intruding upon the federal government in the area or breaching federal statutes or treaties, or influencing trade with any foreign country.

There is, however, a narrow reading of the word "regulate," and the Supreme Court has never had it so. It was more that 150 years ago that Court decided *Brown* v. *Maryland*,[85] holding that a state license fee on importers was an unconstitutional regulation of foreign commerce. The lesson of that case and its progeny is aptly summed up in the Congressional Research Service Report in this language: "The Supreme Court also has made clear that the power to regulate foreign commerce includes not only the control of the terms and conditions of passage of items of commerce (e.g., capital, securities, financial obligations, services, and goods) between the United States and foreign countries, but also the control of the terms and conditions of the domestic markets for foreign items of commerce that Congress has allowed into this country."[86]

Disinvestment laws inevitably work to the detriment of American firms having investments in the proscribed countries; and disinvestment laws inevitably work to the detriment of commerce with those countries. It is not stretching analysis to conclude that such laws are *regulating* commerce; and it does not require an expansive reading of *Brown* v. *Maryland* (or the myriad other cases on the subject) to reach the conclusion that such laws are unconstitutional.

State and municipal disinvestment enactments can also prevent "this Nation from 'speaking with one voice' in regulating foreign trade."[87] At least five states and more than a dozen cities have such laws;[88] the vast majority do not. Iowa's governor vetoed such legislation in May, 1984.[89]

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[82] Supra, p. 84.
[83] 447 U.S. 429, 438 n. 9 (1980).
[84] Supra, note 10; supra, note 8 at 241. (Emphasis supplied.)
[85] 12 Wheat. (25 U.S.) 419 (1827).
[86] Supra, note 7 at 15; see supra, note 8 at 88.
[87] Japan Line, Ltd. v. County of Los Angeles, 441 U.S. 434, 452 (1979).

In addition there exists a conflict or possible conflict with federal legislation restricting trade with these proscribed nations. And to the extent that such conflict may exist, it involves federal preemption pursuant to the Supremacy Clause as well as the Commerce Clause. This is discussed beginning at page 30 under *Foreign Relations*.

Military exports to South Africa, for example, have been prohibited by the federal government since 1964, in compliance with a voluntary arms embargo established by the United Nations. Such ban was made mandatory in 1977 and in 1978 the U.S. Department of Commerce prohibited all exports to that country "that the exporter knows or has reason to know are destined for use by the South African military or police."[90]

Such restrictions, according to a commentary in the American Journal of Internation Law, "are not simply a response by the U.S. Government to an international mandate. They also serve the recognized foreign policy purpose of firmly disassociating the United States from the apartheid policies of the South African regime. . . At the same time, however, the fact that the U.S. Government has not gone so far as to adopt more expensive trade restrictions is recognition of the importance of U.S. commercial interests in South Africa."[91]

An America where the federal government has one set of laws on trade exports and its states and cities have a variety of other laws on the subject is not "speaking with one voice" in regulating foreign commerce.

VII. FOREIGN RELATIONS

Even if some court at some time might impose the participant-regulator role as a ban to unconstitutionality in the foreign commerce context, disinvestment enactments would still have to pass the hurdle of federal government supremacy in the conduct of foreign relations.

Here is some of the Supreme Court language on this point: "That the supremacy of the national power in the general field of foreign affairs . . . is made clear by the Constitution, was pointed out by the authors of The

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[88] Supra, notes 3 and 4.

[89] Message of Iowa Governor Terry E. Branstad to the Secretary of State, May 19, 1984, disapproving disinvestment provisions in House File 2521. The veto was not based on constitutional considerations but rather the Governor's position that disinvestment would be counterproductive. "Instead of the negative approach reflected in House File 2521, I believe we would benefit blacks in South Africa far more with a positive effort to achieve racial equality. This can best be accomplished, not by divesting our ability to exercise influence, but by capitalizing on it." (At p. 4.)

[90] Mehlman, Milch and Toumanoff, "United States Restrictions on Exports to South Africa," 73 Am. J. Int'l. L. 581 (1979).

[91] Ibid.

Federalist in 1787, and has since been given continuous recognition by this Court."[92]

Also oft-quoted is this statement of Justice Frankfurter: "Although there is in the Constitution no specific grant to Congress of power to enact legislation for the effective regulation of foreign affairs, there can be no doubt of the existence of this power in the law-making organ of the Nation. . . . The States that joined together to form a single Nation and to create, through the Constitution, a Federal Government to conduct the affairs of that Nation must be held to have granted that Government the powers indispensable to its functioning effectively in the company of soveriegn nations."[93]

The oft-cited opinion of *Hines* v. *Davidowitz*[94] involved a conflict between a state alien registration law and a federal statute covering the same subject. The oft-cited opinion of *United States* v. *Pink*[95] involved a conflict between a New York judicial decree refusing to honor a Soviet claim to assets of a nationalized Russian company and an Executive Agreement which had recognized the right of the Soviet Union to nationalized property.

But while these and similar cases have been cited as authority for the unconstitutionality of disinvestment laws, they are readily distinguishable. As the Congressional Research Service report correctly points out, "because of the conflicts between explicit federal and State authorities in these cases, the results in them perhaps may be explained as much by the Supremacy Clause as by any inherent inability of the States to act in any manner affecting foreign affairs."[96]

But what of the situation where—as can be argued in the disinvestment controversy—there is no conflicting exercise of federal power. The answer turns on interpretations of the 1968 decision in *Zschernig* v. *Miller*,[97] which has emerged as the single most important case on the constitutionality issue.

As Professor Louis Henkin has pointed out, the Supreme Court had long found limitations on state regulation or taxation of foreign commerce implied in the Commerce Clause. "The Court never asked whether such state actions might run afoul also of some larger principle limiting the States in matters that relate to foreign affairs."[98] "[I]t was never suggested that [state actions] might run afoul of an *implicit* constitutional limitation barring state impingement on the federal domain of foreign relations even when the federal government had not acted."[99] However, Professor Henkin explains, this was before 1968 and the *Zschernig* case. He continued: "Such a larger principle—*how large is yet to be determined*—has now become part of the Constitution."[100]

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[92] Hines v. Davidowitz, 312 U.S. 52, 62 (1941). (Footnote references omitted.)

[93] Perez v. Brownell, 356 U.S. 44, 56 (1958). While this case was later overruled by Afroyim v. Rusk, 387 U.S. 253 (1967), neither the dissent in Perez nor the overruling majority in Afroyim questioned the validity of the Frankfurter formulation.

[94] Supra, note 92.

[95] 315 U.S. 203 (1942).

[96] Supra, note 7 at 28; see supra, note 8 at 101.

[97] 389 U.S. 429 (1968).

[98] L. Henkin, Foreign Affairs and the Constitution (1972), at 238. (Emphasis supplied.)

In *Zschernig*, the Supreme Court was interpreting a so-called "Iron Curtain Act." The Court invalidated an Oregon statute which provided for escheat in cases where a non-resident alien heir or legatee claimed property in Oregon unless such beneficiary could (1) establish that his country would permit United States citizens to receive monies from an estate in his country on a reciprocal basis and (2) that his country would permit him to receive proceeds "without confiscation." Admittedly, there was an absence of any "relevant exercise of federal power" and "no basis for deriving any prohibition by 'interpretation' of the silence of Congress and the President. The Court tells us that the Constitution itself excludes such state intrusions even when the federal branches have not acted."[101]

On its face, *Zschernig* covers disinvestment enactments. Certainly it provides precedent for arguing and sustaining unconstitutionality. And this is further supported by Justice Douglas' language: "As one reads the Oregon decisions, it seems that foreign policy attitudes, the freezing or thawing of the cold war, and the like are the real desiderata. Yet they of course are matters for the Federal Government, not for local probate court."[102]

The statute was found to represent the "kind of state involvement in foreign affairs and international relations" which involve "matters which the Constitution entrusts solely to the Federal Government."[103] Again: "The statute as construed seems to make unavoidable judicial criticism of nations established on a more authoritarian basis than our own."[104] Finally: "The Oregon law does, indeed, illustrate the dangers which are involved if each State . . . is permitted to establish its own foreign policy."[105]

Certainly disinvestment laws manifest "criticism of nations established on a more authoritarian basis than our own." Certainly, they are expressions of foreign policy. Examine, for example, some of the language of the Connecticut enactment, "Sec. 3-13g. *Investments in corporations doing business in Iran*. The state treasurer shall review the major investment policies of the state for purposes of ensuring that state funds are not invested in any corporation engaged in any form of business in Iran which could be considered to be contrary to the foreign policy or national interests of the

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[99] Ibid.
[100] Ibid.
[101] Id. at 239.
[102] 387 U.S. at 437-38.
[103] 387 U.S. at 436.
[104] 387 U.S. at 440.
[105] 387 U.S. at 441.

United States, particularly in respect to the release of all American hostages held in Iran."[106]

But does *Zschernig* go so far as to hold that statutes critical of the policies of a foreign nation are unconstitutional *per se*? Is the *per se* argument strengthened in light of a finding of unconstitutionality despite the Justice Department brief as *amicus curiae* stating that it "does not . . . contend that the application of the Oregon escheat statute in the circumstances of this case unduly interferes with the United States' conduct of foreign affairs"?[107]

Answers will not be found in restudying opinion[108] which at this writing is more than sixteen years old, nor by second-guessing the case commentaries.[109] The *Zschernig* analysis does not end with *Zschernig*.

Of course there are numerous decisions which have applied the *Zschernig* rationale, particularly in New York. But, whether the facts of such cases are dispositive of the constitutionality of disinvestment laws is questionable. In one case, the New York Court of Appeals held unconstitutional the application of an anti-discriminative ordinance which would have barred the *New York Times* from publishing advertisements for employment in South Africa.[110] While none of these advertisements referred to race or racial discrimination, the New York City Commission on Human Rights concluded that because South Africa mandated apartheid that the advertisements were automatically violative of the ordinance.

Another New York case saw an attempt by a state agency to apply its state civil rights laws to the South African Airways (owned by the Republic of South Africa) and to the South African consulate in respect to its visa granting practices. The Supreme Court in New York County issued a writ of prohibition, asserting that "[f]oreign policy is a federal concern, not amenable to state action."[111]

The most important *post-Zschernig* case, however, was the 1977 New Jersey Supreme Court decision[112] upholding the state's "Buy American" Act. In sustaining a law requiring use in government purchase contracts of materials produced in the United States, reliance was placed on the proprietary distinction made in *Hughes* v. *Alexandria Scrap Corp.*[113] "Under the principle of *Alexandria Scrap*, the state agency's limitations with respect to purchases of materials and equipment for that plant, to be owned and operated as a government institution, do not offend the Commerce Clause. The New Jersey Buy American provisions are not measures regulating private business."[114] And the New Jersey Court also concluded, "[t]hat this case involves foreign commerce, and not interstate commerce, does not disturb our analysis."[115]

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[106] Conn. ch. 32, ¶3-13g, P.A. 80-431, S. 3, 4 (1980).

[107] 387 U.S. at 460.

[108] Opinion of the Court by Justice Douglas, concurring opinion of Justice Stewart, joined by Justice Brennan, concurring opinion by Justice Hanlan and dissenting opinion by Justice White.

[109] See, for example, Note, the Supreme Court, 1967 Term, which contended that Zschernig might eventually result in the application of a balancing test as in the Commerce Clause cases. 82 Harv. L. Rev. 244, 245 (1968).

[110] New York Times Co. v. City of New York Commission on Human Rights, 41 N.Y.2d 345, N.E. 393 N.E.S.2d 312 (1977).

[111] South African Airways v. New York State Division of Human Rights, 64 Misc.2d 707, 711 (Sup. Ct., N.Y. Cty., 1970).

[112] K.S.B. Tech. Sales v. No. Jersey Dist. Water Supply, 75 N.J. 272, 381 A.2d 774 (1977), appeal dismissed, 435 U.S. 982 (1978).

On the other hand, the decision contained these dicta: "The Buy American provisions apply without any discrimination based on the ideology of the seller's county. Nor is there any evidence to suggest that the political climate in a potential foreign bidder's nation has ever motivated the inclusion of the Buy American condition in an invitation for bids or that its inclusion is predicated on an assessment of the internal policies of any foreign country. If refined inquiries into foreign ideologies entered the decision to apply or not to apply the condition, there would, of course, be little difficulty in finding a constitutional infirmity of the type condemned in *Zschernig*."[116]

And where is the disinvestment statute not based on the ideology of the country affected? Where is the disinvestment statute that does not involve the internal policies of the foreign sovereignty in which disinvestment is sought? Do such dicta negate the reliance on *Alexandria Scrap* and the holding that statutes involving foreign relations can still sometimes be sustained as proprietary?

VIII. FINAL WORD

The answer to the question whether disinvestment laws are constitutional is that there is no one certain answer. Perhaps there are too many answers to permit certainty. The Tenth Amendment makes such laws facially constitutional unless they are held to be in conflict with the interstate commerce provision of the Commerce Clause, the foreign commerce provision of the Commerce Clause, or the federal government's supremacy in foreign relations.

The participant-regulator (or proprietary-governmental) distinction, if held valid in this context, may make disinvestment statutes immune from the interstate commerce proscription. But the ultimate issue is whether this distinction will be extended to foreign commerce. Of course there is argument that can be made, and it is being made in litigation now before the courts—contending both for and against constitutionality.

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[113] 426 U.S. 794 (1976). See text, p. 81, accompanying notes 31 to 40.
[114] 75 N.J. at 300, 381 A.2d at 788.
[115] 75 N.J. at 299, 381 A.2d at 788.
[116] 75 N.J. at 291-92, 381 A.2d at 783-84.

DIVESTMENT IS NOT THE ANSWER*

by

WILLIAM G. MILLIKEN
Former Governor of Michigan

The United States is under increasing domestic political pressure to help effectuate changes in the internal policies of other nations. South Africa comes immediately to mind and the strategy of divestment of securities in corporations doing business there is the proffered tool

Current U.S. policy towards South Africa is the widely misunderstood "constructive engagement." President Reagan defined that policy in congratulating Bishop Tutu on receiving the 1984 Nobel Peace Prize, saying; "The United States has heard the appeal for justice voiced by South Africans who suffer under apartheid rule. We continue to urge the South African government to engage in a meaningful dialogue with all its citizens aimed at accomplishing a peaceful transition away from apartheid."

Despite this, the United States is now seen as adopting a position of neutrality regarding South African whites and blacks. However, U.S. policy officially rejects as morally wrong apartheid and its consequences—the attempts to denationalize the black majority and relegate blacks to citizenship in tribal "homelands," and the repression of individuals and organizations through such practices as detention and banning. Nevertheless, there is the growing feeling among those seeking change that the United States is more interested in retaining the good will of the South African government than it is in using its political and economic influence against apartheid.

In my visit to South Africa earlier this year, I learned that present U.S. policy, with its perceived emphasis on accommodation and its seeming willingness to embrace any government, however repressive, which declares itself opposed to communism, is playing into the hands of a regime that has no intention of abandoning its apartheid policies. Indeed, the harsh security laws—ostensibly to control communism—have served their real purpose, which is to control and destroy any kind of opposition to apartheid.

What can the United States do to help effect change? We should, at the very least, leave no doubt whatever that we are unalterably opposed to apartheid. That signal should come through clearly and be constantly sounded. There must be no misunderstanding of the U.S. position on this point. There is now.

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*Governor Milliken has written more fully on South Africa in two Op-Ed articles in the Detroit Free Press, April 19 and 20, 1984.

More can be done. The Rockefeller Foundation-financed Study Commission on U.S. Policy toward Southern Africa has recommended promoting political power-sharing by exerting influence on the South African government by diplomatic moves; barring export of certain U.S. goods, technology (particularly oil-drilling technology) and services; broadening the arms and nuclear embargos; withholding diplomatic recognition and economic aid from the independent homelands, and supporting organizations inside South Africa working for peaceful change such as multiracial labor unions, educational programs, public-interest, self-help and other organizations.

Some of these objectives were contained in bills passed by Congress recently. Others will be considered during 1985. What is significant is that there is a growing interest in South Africa and a recognition that the United States has a moral obligation to exert what pressure it can to bring about reform.

Divestment is continuously being urged with divestment advocates claiming increasing momentum. Eleven cities and five states have passed some form of divestment law. Some 20 states are expected to consider such laws in the next year.

I did not talk with a single individual in South Africa—white or black—who supports this approach. The fact is, most U.S. companies are operating in an enlightened, responsible way. Since 1977, with the announcement of the Sullivan principles (a code of business conduct relating to desegregating facilities, equal pay for equal work, equalization of benefits for all races and a number of other goals), more than 120 companies have become signatories. Were commercial ties cut and U.S. companies to pull out, the United States would lose part of what leverage it has to exert pressure on the South African government for change and with the loss of jobs the first to suffer would be blacks, not whites.

Although I oppose an outright ban on all South African investment, an action I took in my last year as governor of Michigan may appear inconsistent with this position. At that time I signed a bill into law requiring Michigan public colleges and universities to divest themselves of any holdings in companies doing business in South Africa. It was a difficult decision. At the time I was fully aware of the arguments on both sides but believed there was symbolic importance to the act and that a statement needed to be made through our public institutions. I still do. A total pullout of U.S. investments would serve no one's purpose. The action itself had little impact. It did, however, send a signal—and I think American public officials must constantly signal their abhorrence of apartheid.

It is in America's own interests to give such signals. It is in America's own interests to signal its adherence to principles of justice and to a higher moral order whether dealing with South Africa or the U.S.S.R., Poland or Iran. Divestment will leave the U.S. with less, not more, influence and with less ability to assist in the struggle for justice. Just by meeting the goals of the Sullivan principles, U.S. companies are in the forefront of change.

Late in 1983, and again this year, the representatives of the signatory companies met in New York to work out a strategy to improve the quality of employees' lives in such areas as education, housing, health facilities, recreation and transportation. Even as he increasingly relies on the skills and services of black labor, the Afrikaner has relentlessly continued to deny opportunity to blacks. To the extent U.S. companies achieve equal pay for equal work, advance blacks into management positions, end all segregation on the job and seek to improve conditions behond the workplace, they will give the Afrikaner reason to worry that what he has created cannot last forever.

Divestment is not the answer, although the U.S. should do more because hopes for genuine reform of the South African government are fading among blacks and others. Desmond Tutu said: "Our people are rapidly despairing of a peaceful resolution in South Africa. Those of us who still speak of 'peace' and 'reconciliation' belong to a rapidly diminishing minority." The central issue of South African life, that of political rights for the more than 21 million blacks, is simply not on the government's agenda.

There is not much time left.

And as Alan Paton reminds us in his "Cry, the Beloved Country": "'I have one great fear in my heart,' a black minister says, 'That one day when they (the whites) turn to loving, they will find we are turned to hating.'"

STATEMENT OF DEREK BOK ON INVESTMENT POLICY*

by

PRESIDENT DEREK BOK
Harvard University

On May 9, 1984, the Advisory Committee on Shareholder Responsibility (ACSR) submitted a report on the subject of Harvard's investments in American corporations doing business in South Africa. The Harvard Corporation's Committee on Shareholder Responsibility has today issued a detailed reply to the ACSR report, agreeing with some of its proposals and disagreeing with others. I will not repeat all that is said in that reply. But I will express some thoughts of my own on the subject of divestment, since it represents the point of greatest disagreement in this community concerning the response of the University to the injustices of apartheid.

Let me begin by making clear that this is not a dispute about apartheid or the record of the South African government. All of us on every side of the divestment issue agree that apartheid is a cruel and shameful form of racial exploitation that has no conceivable justification. Nor does this debate simply reflect a difference of opinion over tactics or money—though I do believe that the tactics of divestment will not succeed and that they would cost the university money. At bottom, this is also a dispute about the nature of the university itself and the ways in which it should and should not respond to evil in the outside world.

Harvard has taken a number of steps in response to apartheid. We have cast our ballot with care in shareholder resolutions concerning South Africa, often voting to urge corporations to subscribe to the Sullivan Principles, sometimes voting to have a company withdraw entirely from South Africa. We have engaged in intensive dialogue with corporations to persuade them to improve wage and employment practices for black South African employees and to improve the quality of life outside the workplace for these employees, their families, and nonwhites in general. A number of companies have taken such steps. We have also initiated a program to bring nonwhite students from South Africa to study each year at Harvard. Finally, I have helped to organize a nationwide effort of universities, corporations, and foundations which has brought over 300 black South African students to study in colleges and professional schools across the country.

Many members of this community would like Harvard to take a different course and divest all of its stock in American companies doing business in South Africa. I have disagreed with this view, and I continue to do so. Much as I oppose apartheid, I strongly believe that universities should not attempt to use their power to press their political and economic views on other organizations and individuals beyond the campus. This is essentially what Harvard would be doing by divesting—boycotting the stock of American companies to bring the pressure of this institution to bear against them to have them cease doing business in South Africa.

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My views on this matter are not casual; they involve the essential purposes of the university and the terms on which it exists and does its work in our society. Universities have the distinctive mission of promoting discovery, new ideas, understanding, and education. These activities depend on experimentation, self-expression, and the widest opportunity for debate and dissent. They require insulation from outside pressures that would impose an orthodoxy of "safe" ideas or use the university for ends other than learning and the pursuit of truth. In this respect, the university is quite unlike other institutions, such as governmental bodies, which are designed to exert power over others and to be subject in turn to outside pressures from groups seeking to influence the uses of power in a democracy.

In order to protect the process of learning and discovery, universities must maintain a reasonable autonomy in the conduct of their internal affairs. They must persuade the outside world to refrain from exerting pressure that would limit the freedom of their members to speak and publish as they choose. They must also preserve the freedom to select the best teachers and scholars for the faculty regardless of their opinions or political activities and to set their own policies without external control save by the government in behalf of established public ends.

Today, these freedoms are generally respected in the society. But this was not always the case. The autonomy of academic institutions was resisted for many decades by those who thought it too dangerous to allow universities to exist without some control over what was written or taught within their walls. Even now, our freedom exists within limits. Like all freedoms it has reciprocal obligations. We cannot expect individuals and organizations to respect our right to speak and write and choose our members as we think best if we insist on using institutional sanctions to try to impose on them those policies and opinions that we consider important.

The obligation I perceive in no way inhibits individual members of this community from expressing themselves on issues such as apartheid or from engaging in political efforts to promote their views. Indeed the right to act in this way is an essential part of academic freedom. There is likewise no reason why the university should not perform the function entrusted to it as a shareholder under our laws by voting on issues of social responsibility. The university may even communicate its views through discussions with the officials of companies whose stock it holds. But the line is crossed when a university goes beyond expressing opinions and tries to exert economic pressure by diverting stock or engaging in a boycott in order to press its views on outside organizations.[1]

The more the university acts in this way the more it risks disturbing the implicit arrangements under which institutions of learning can continue to function with the freedom they need to carry out their essential mission. If Harvard insists on exerting leverage on issues we care deeply about, individuals, corporations, and other organizations are likely to exert economic pressure against us on matters they feel strongly about, such as the radical opinions of particular professors, or Harvard's position toward ROTC, or the University's policies concerning involvement in covert CIA activities.

Every year, shareholder resolutions are introduced to bar corporate support to universities on grounds such as those just mentioned. These resolutions are regularly defeated because most shareholders are persuaded that corporations should not use economic leverage to influence the internal policies of universities. It would be unreasonable to expect such attitudes to continue if we begin boycotting products or selling shares to press particular policies on corporations and other organizations.

Some of the strongest proponents of divestment are not deterred by this prospect. Indeed, they have organized a fund to be given to Harvard only if it agrees to sell its stock in companies doing business in South Africa. I could not disagree more with this approach. Once we enter a world in which those with money and power feel free to exert leverage to influence university policies, we should not be surprised to find that universities have lost much of their valuable independence. Nor should we complain when we discover that those who wield the most power are not necessarily those whose policies are congenial to our own.

Critics may reply that I am putting the private interest of the University ahead of the plight of the black majority that suffers under the heel of apartheid. In response, I would begin by resisting the charge that the interests just described are merely self-serving. In carrying out its tasks of education and research, a university is performing public functions of great importance to society. The freedoms universities seek, like their buildings and endowments, are not private assets but resources essential to the accomplishments of a vital public mission.

In addition, I reject the suggestions that a policy against divestment will perpetuate injustice, since I see no realistic possibility that having universities sell their stock in American companies will make a noticeable contribution to ending apartheid or improving the lot of black South Africans.

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[1] The University may occasionally sell the stock of a corporation because of a disagreement with its policies. Such action, however, is not taken to pressure the company into conforming with Harvard's views but occurs because the University does not wish to continue an association with a firm that fails to live up to minimum ethical standards and offers no reasonable prospect of doing so in the future.

Divestment can make a significant contribution to overcoming apartheid only if all of the following questions can be answered affirmatively:

> 1. Will selling stock offer a significant chance of persuading American firms to leave South Africa?

There is no indication that sales of stock will put sufficient economic pressure on the management of American companies to induce them to withdraw, since such stock will be purchased by others with no permanent economic consequences to the firm. Nor is there any evidence that the publicity engendered by sales of stock will lead companies to incur the losses entailed by abandoning their South African operations. In fact, no American company has left the country because of divestment actions taken by various states and municipalities over the past few years.

> 2. Is divestment a more effective way of inducing companies to withdraw than voting in favor of corporate resolutions to withdraw?

There is no evidence to indicate that this is so. Neither divestment nor shareholder resolutions have caused any American company to withdraw, and neither tactic holds much promise of doing so in the future. Shareholder resolutions and dialogue with company executives have at least led to some tangible corporate actions to improve the lives of black South Africans. Divestment has not had even this effect.

> 3. Even if divestment could somehow help persuade American companies to leave South Africa, would their withdrawal materially help in overcoming apartheid?

In fact, if American companies left South Africa, it is virtually certain that their operations would be taken over either by local interests or by foreign concerns. Since the business would continue operating, it is not clear just how withdrawal would pressure the government into reforming the apartheid system.

> 4. Would corporate withdrawal, assuming it somehow occurred, contribute more to the defeat of apartheid than efforts by American companies to improve wages, employment opportunities, and social conditions of nonwhite workers?

At bottom, this question raises the difficult issue of how major social change can come about in a country like South Africa. Those who support corporate activity on South Africa argue that economic development will eventually undermine apartheid as the needs of the economy force the Nationalist regime to give more education, economic opportunity, and ultimately power to nonwhites. Proponents of divestiture believe that real change will never occur by evolutionary means, whereas the withdrawal of American companies could produce widespread unemployment and economic distress that would either force the government to institute reforms or lead to a successful revolution.

Both these theories leave many questions unanswered, and it would be difficult to choose between them or to assert that either will prove to be correct. In response to proponents of divestment, it seems most unlikely that corporate withdrawal would cause an economic collapse, since other companies would presumably take over the operations abandoned by American firms. Even assuming that withdrawal did hurt the economy substantially, the question still remains whether this result would bring about the end of apartheid or simply cause more suffering, black unemployment, and repression. This question seems all but impossible to answer. Proponents of divestment argue that blacks and their leaders favor withdrawal of American companies. In fact, some do, but others don't. In the words of the American columnist William Raspberry, writing from Capetown, "If the Harvard students find the questions easy, black South Africans are by no means unanimously agreed."

In summary, divestment can have a constructive effect on South Africa only if we can answer all four of the preceding questions affirmatively. In reality, it is far from clear that one can give a positive answer to *any* of these questions. The likelihood that *all four* can be answered affirmatively is vanishingly small. Hence, I find no basis for concluding that universities will help defeat apartheid in South Africa by agreeing to divest. As a matter of principle, therefore, I see no reason for departing from the basic norms that define the role of the university in society. Even apart from the special constraints on universities, I do not believe that we can know enough about the future of a distant country to insist to the point of public boycott that American companies will do more for black South Africans by leaving the country than by remaining and instituting better employment and social conditions. And I find it difficult to support in good conscience a decision that would jeopardize resources given to us for education purposes to pursue a strategy that neither furthers the academic ends of the institution nor offers a realistic chance of achieving its objectives.

Despite these conditions, some critics contend that Harvard should divest rather than continue its practice of voting on shareholder resolutions and communicating with corporate managements because the present practice has failed to overcome apartheid or to close the gap in wages and working conditions between black and white workers. This argument misconceives the current policy. The University did not adopt this policy because it felt that its actions—or any actions that universities could take—would have substantial effect on apartheid. Harvard decided on this course of action in the conviction that it should vote shares as conscientiously as possible, even if the effects are only limited, and because of a strong belief in the principle that voting and communicating views are appropriate forms of behavior for a university while efforts to exert pressure through boycotts and divestment are not.

Others who advocate divestment have suggested that the University's normal policies as a shareholder need not apply because South Africa is such a special case—the only nation that institutionalizes racial discrimination and practices it on a massive scale. Recognizing the enormities of apartheid, Harvard has gone beyond its normal practices by communicating directly with corporate officials to persuade them to alter their employment practices and by creating special scholarship programs for black South Africans. But it is one thing to make efforts of this kind and quite another to disregard one of the University's basic principles, especially when such action is urged in pursuit of a strategy that has no significant chance of affecting the course of events in South Africa.

Those who seek a more effective way of putting pressure on the Afrikaner government need not look far. Last year, for example, bills were introduced in Congress, and passed the House of Representatives, to mandate fair labor practices, limit bank loans, impose export controls, and forbid all new American investment in South Africa. Whatever one may think of these bills, those who favor divestment must concede that such legislation would be a vastly more effective means of achieving their objective. Nevertheless, I have not observed substantial numbers of persons on this campus working actively for the passage of these measures.

Other critics take a very different tack and argue that we should divest, whether or not it will have any practical effect, because it is simply immoral to hold stock in any firm that does business in South Africa. This argument would have more force if Harvard owned stock in companies doing all or most of their business in South Africa. But that is not the case. The companies from which we are asked to divest typically do less than one percent of their business in South Africa. We do not invest in these concerns because of their South Africa operations; it would be more nearly correct to say that we invest despite those operations.

The point, therefore, must be that Harvard should sell stock on principle if it is tainted, however slightly, by the stain of doing business in South Africa. This is a troublesome argument. It suggests that morality lies in trying to avoid all contact with the wrongs of the world and that it is better to sell one's stock and simply turn away from the injustices of South Africa than continue working as a shareholder to persuade companies to improve the wages and conditions of their black employees.

We should also recognize that far more than divestment would be needed to sever all our links to South Africa. If it is wrong to hold stock in an American company doing a tiny share of its business in South Africa, one would suppose that it is also immoral to hold shares in the many companies that buy goods from South Africa or sell goods to it, since they too benefit from the South African economy and presumably help to sustain it. One would also suppose that Harvard should not accept gifts of money derived in some demonstrable part from South African operations, since they would also be tainted. Accepting tuitions from South African students would likewise seem suspect; even tuitions from American students paid for in part by dividends from companies doing business in South Africa could be questioned. In short, the ramifications of such a rigorous policy are far-reaching indeed.

Before we insist on such a drastic moral standard, we should ask ourselves not only whether it is practical but whether we are willing to apply it to our own lives. How many of us have examined the purchases we make to see whether they come from companies that do business in or with South Africa? How many students have inquired whether their tuitions are paid in part from the dividends of companies with a South African subsidiary? For that matter, how many of us have stopped buying goods or using funds that can be traced to Guatemala, Salvador, Iran, Uganda, or other countries where thousands of innocent people have been killed with no justification? The truth is that virtually no one follows such a policy or regards it as a feasible standard to follow.

Finally, some have argued that Harvard should divest because divestment is a particularly dramatic, affirmative way of expressing the University's opposition to apartheid as a system at war with our ideals of freedom and justice. Such people often stress the pervasive influence of Harvard on the society and argue that the effects of our divestment on world opinion could be substantial. My experience leads me to doubt this view. Harvard may command great respect for what it has accomplished in pursuit of its central mission of research and education; it does not have much influence, even with its own alumni, when it makes institutional statements on political questions such as corporate involvement in South Africa. Like it or not, the public knows that the University cannot claim any special wisdom in expressing itself collectively on issues of this kind.

It is also important to note that Harvard has already stated its clear and complete opposition to apartheid on various occasions. In what respect, then, is divestment a more effective, more forceful expression of disapproval? Because it will continue in some significant way to ending apartheid? We have seen that this is most unlikely. Because the stock of American companies in South Africa is peculiarly tainted? That rationale is also unrealistic. The argument that divestment will be a peculiarly effective gesture must presumably rest on the belief that divestment will cost Harvard money and thus represent a sacrifice which will reveal the depth of our convictions.

This too is a highly questionable argument. Presumably, Harvard could also demonstrate its convictions by giving funds to the African National Congress or some other opposition group. Such a grant would certainly be a dramatic gesture and might well do more than divestment to further the struggle against the Nationalist regime. And yet, despite our revulsion toward apartheid, the fact remains that Harvard's resources were entrusted to us for academic purposes and not as a means of demonstrating our opposition to apartheid or to other manifest injustices and evils around the world. This is one reason why we have supported the expenditure of University funds to educate nonwhites from South Africa at Harvard but have opposed a policy of divestment.

In making these arguments, I am acutely aware of the contrary views expressed by those who strongly favor divestment. I respect their convictions. I hope that they will respect mine. It is never a pleasant task to disagree with others who care deeply about injustice. In the case of South Africa, the injustice is so monstrous that the heart aches for some opportunity to resist effectively. Nevertheless, such feelings cannot bring me to support a course of action that would force this University to deviate from its proper role, jeopardize its independence, and risk its resources in behalf of a dubious strategy that has no realistic prospect of success. As a result, having thought about the issues as carefully as I could, I continue to believe, as I did in 1978, that the arguments for divestment are not convincing and that Harvard should not adopt such a policy.

CONCLUDING SUMMARY

by

ROBERT J. D'AGOSTINO

"But the pension fund was just sitting there." (See, Schotland, p. 31).

Once again, groups pursuing their own political goals, having failed to win assent through the appropriate political or legislative processes, attempt to claim public jurisdiction over yet another facet of private choice—that of economic investments (See Langbein, p. 8). What's actually at stake in accepting a policy of divestment, or social investing (Langbein) or divergent investing (Schotland), is obfuscated by the hysterical level of attacks on both South Africa and United States policy towards South Africa. As reprehensible as apartheid is (See Milliken, p. 95), it is neither the most repressive of the totalitarian systems nor is it unique. The Soviet Union, Cuba, Iran, Ethiopia all have systems less respectful of human rights or more brutal in their lack of concern for human life. All could or should be, if we are to follow the logic of the divestment advocates, subject to divestment, boycotts and the like. It would be foreign policy by pressure group.

In addition, pressure is being increasingly brought to bear on state and local government and union pension fund managers to invest "locally" for the stated rationale of job creation or stimulating the local economy in some way. Again and like the pressure for divestment of shares in companies following someone's definition of social irresponsibility the rationale is based on factors other than what is a prudent investment decision.

In all of this whether dealing with countries whose internal policies are thought unacceptable, or localism, or allegedly socially irresponsible companies, fiduciary responsibility to those who have entrusted their savings or retirement income to others is ignored in favor of political criteria.

Is Divestment Moral?

The answer to this question involves two issues. The first is a consideration of whether withdrawal from countries whose internal policies we disapprove is more or less likely to bring about the change desired. Is responsible involvement really *immoral*? (See, Schotland, p. 63).

For example, U.S. companies were the first to bargain with black labor unions in South Africa, generally are signatories to the Sullivan Principles (See, Schotland, p. 60), and are leaders in offering educational opportunities to blacks. Withdrawal from South Africa will most assuredly harm the very persons advocates of divestment claim they wish to help.

Given such facts, it is most certainly wrong to call responsible investment immoral, and more logically to call it moral because it is a more effective way to influence policy and because it demonstrably enhances life. (See, Schotland, p. 62).

The second issue is a consideration of just who is setting the social investment agenda compared with who is paying the price. Many divestment proposals are directed at pension funds, not in order to further the interest of pensioners, but in disregard of their interests. By taking advantage of the separation of ownership and control, pressure groups attempt to politicize the investment process. The adoption of a political investment strategy carries with it the risks of lower returns on investment and a higher investment risk. (See, Langbein, p. 20). Is it moral to ask the elderly to surrender retirement income? When people are directly confronted with adopting social or divergent investing voluntarily, they generally refuse. Stockholders routinely vote no on motions to withdraw investments in South Africa; the mutual funds which limit investments to "socially responsible" companies are small. (See Langbein, p. 16 Schotland, p. 42).

In responding to pressure for Harvard to divest stock, President Derek Bok discussed the proper role of a university and the importance of its remaining as free from outside political pressure as possible. Is the threat to academic integrity posed by the advocates of divestment moral?

Is Divestment Legal?

The Constitution leaves the conduct of foreign policy exclusively in the hands of the federal government. The impact on foreign nations for an effort to sever American economic involvement with them has potentially significant impact on relations with the target countries. However, laws which focus on corporate behavior are more insulated from Constitutional challenge (See, Schotland, p. 65, Blaustein, p. 79).

In addition, state and local divestment or investment acts likely violate the Commerce Clause. The test is whether a state statute, on balance, promotes legitimate local concerns without interfering or interfering unduly with national concerns. Divestment does not promote local economic concerns since it does not reflect concern for the stability of the investments, rather it purposely interferes with foreign and interstate commerce. (See, Schotland, p. 66).

Aside from Constitutional challenge, a trustee who sacrifices the beneficiary's financial well-being for any social cause violates both his duty of loyalty to that beneficiary and the prudent investment standard. A trust must be administered solely in the interest of the beneficiary. The Employee Retirement Income Security Act (ERISA) codified these duties of loyalty and prudent investing in its sole interest and exclusive purpose rules. (ERISA does not apply to state and local pension plans, hence they and not private plans are the targets of the divestment lobby.) (See, Langbein, p. 6).

Is Divestment Productive?

Whether dealing with divestment as a foreign policy strategy, a social strategy, or a way to keep investments local, the futility of most such private efforts are clearly manifest. Simple substitution effects demonstrate that someone else is there to fill the gap. U.S. laws forbidding the exportation of military or police equipment to South Africa have resulted in European and Japanese equipment being substituted, costing U.S. jobs. Localism laws have resulted in retaliatory localism laws or shifts of other investors to the forgone investment opportunities. In those instances where local investing has increased the sum total of such investing, it has done so at the cost of accepting lower rates of return for the invested funds, harming the beneficiaries.

Unless the U.S. has a substantial position in a market (as in the international grain market) withdrawal of investments from a country merely reduces our influence and harms those we try to help since U.S. companies have shown the most sensitivity for issues of fairness and justice. (See, Schotland, p. 61).

Conclusion

The formulation of foreign policy should be left where the Constitution placed it. An individual, voluntarily, has a right and should press his views, control his own investments, and make whatever gestures for which he might be willing to take the consequences. Asking beneficiaries or investors to pay the costs of pressure-group-induced decisions is unjust and hypocritical.

Similarly, localism threatens to interfere with both interstate commerce and prudent investment decisions.

The advocates of divestment or any other policy have access to government. To pressure universities, pension funds, and foundations to politicize their decisions, leaving them open to never ending political demands while potentially jeopardizing their missions is in itself immoral. Social investing is a matter of individual choice. One man's definition of social justice may well be another man's definition of tyranny. Although, the result desired from divestment in, for example, a South Africa or Nicaragua, may seem desirable, advocates of divestment are ignoring the full consequences of what they propose.

National Legal Center for the Public Interest

Publications List

Venue at the Crossroads, by Senator Paul Laxalt, Linden H. Kettlewell, Nicholas C. Yost and David P. Currie with an Introduction by Senator Dennis DeConcini (1982 - $3.50)*

Enforcing the Fourth Amendment by Alternatives to the Exclusionary Rule, by Judge Malcolm R. Wilkey with an Introduction by Senator Orrin G. Hatch (1982 - $3.50)*

Antitrust Contribution and Claim Reduction: An Objective Assessment, by Griffin B. Bell with an Introduction by Senator Paul Laxalt and a Preface by Congressman Jack Brooks (1982 - $3.50)*

Fourteen Years or Life: The Bankruptcy Court Dilemma, by Judge Robert E. DeMascio, Judge William L. Norton and Richard Lieb, Esq. with an Introduction by Senator Strom Thurmond and a Preface by Congressman Peter W. Rodino, Jr. (1983 - $3.50)*

Abolition of Diversity Jurisdiction: An Idea Whose Time Has Come?, by M. Caldwell Butler and John P. Frank with Observations by Chief Justice Vincent L. McKusick, Maine Supreme Judicial Court (1983 - $3.50)

Activism by the Branch of Last Resort: Of the Seizure of Abandoned Swords and Purses, by Judge Malcolm R. Wilkey and a Foreword by the Honorable Sam J. Ervin, former U.S. Senator (1984 - $3.50)

Judicial Wage Determination . . . A Volatile Spectre, perspectives on comparable worth, by Frank C. Morris, Esq. et al with a Foreword by Linda Chavez of the U.S. Commission on Civil Rights (1984 - $3.50)

Edited Proceedings of the 1981 National Conference on *Workers' Compensation and Workplace Liability*. (currently unavailable)

Edited Proceedings of the 1982 National Conference on *Product Liability Tort Law Reform*. (currently unavailable)

Edited Proceedings of the 1983 National Conference on *Health Related Claims: Can the Tort and Compensation Systems Cope?* (1984 - $35.00 Law Libraries; $50.00 all else)

Judicial/Legislative Watch Report - an update report service of NLCPI on legislation and activities affecting the judiciary and the judicial system, (published while Congress is in session, $25.00 per year)

*Demand has exhausted the supply of the original printings. However, Xerox copies are available.

National
Legal Center
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An Educational and Public Service Organization

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- **Publishing the "*Judicial/Legislative Watch Report*";**
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Divestment is continuously being urged with divestment advocates claiming increasing momentum. Eleven cities and five states have passed some form of divestment law. Some 20 states are expected to consider such laws in the next year.

Former Governor William G. Milliken

The fact remains that Harvard's resources were entrusted to us for academic purposes and not as a means of demonstrating our opposition to apartheid or other manifest injustices and evils around the world.

President Derek C. Bok
Harvard University

The formulation of foreign policy should be left where the Constitution placed it. An individual, voluntarily, has a right and should press his views, control his own investments, and make whatever gestures for which he might be willing to take the consequences. Asking beneficiaries or investors to pay the costs of pressure-group-induced decisions is unjust and hypocritical.

Robert J. D'Agostino
Former Deputy Assistant Attorney General

Senator HEINZ. Mr. Schotland, I note for the record also your prepared statement includes five comments on specific provisions of S. 635. They will be a part of the record, too.

Mr. SCHOTLAND. Thank you, Mr. Chairman.

Senator HEINZ. Mr. D'Agostino.

STATEMENT OF ROBERT D'AGOSTINO, NATIONAL LEGAL CENTER FOR THE PUBLIC INTEREST, WASHINGTON, DC

Mr. D'AGOSTINO. I want to thank this committee for inviting me. I am presently in private practice and legal adviser for the National Legal Center for the Public Interest.

The National Legal Center recently published a monograph of which Professor Schotland was a major author and President Bok a contributor, on the issues of divestment or disinvestment. It is not about apartheid and the opinions I express now on S. 635 are my own and not the opinions of the National Legal Center which takes no position on legislation.

The basic question I think we must address is that—well, to start with is that we are not only talking about the Government of South Africa. The Government of South Africa is supported by the majority of the white citizens, so what we are asking is how can the United States help the South African ruling classes open their eyes to the world in which they live? That's the basic question. And does S. 635 do this?

I say it does not and I oppose it as counterproductive.

The United States does not have an unblemished history about influencing matters or the internal affairs of a country for the better. We have often influenced those affairs for the worse and I think that we are in danger of doing that with this bill.

In making South African internal policies a matter of continuing debate in the U.S. Congress, we are inviting the South African Government and a majority of whites to dig in their heels. I realize the high level of debate that goes on in the Congress all the time but I'm not sure the white people of South Africa do.

It seems to me that we ought to ask ourselves what we are trying to achieve and from whence comes the improvement? There is an old saying about how the wise have to undo the damage done by the good. We certainly are risking an awful lot of damage if we proceed with a bill of this sort.

APARTHEID IS A TOTALITARIAN SYSTEM

Now I won't go over my testimony or read it in detail, but Senator Proxmire defined apartheid and I think he defined it well. There is no question under the definition used by the Senator that apartheid is a totalitarian system.

Now the question is, what has happened to that system since it was imposed in 1948, and I submit to you that it has changed and changed in many, many ways. There has been vast improvement in certain areas and very little improvement in other areas.

There has been vast improvement in the economic well-being of black citizens of South Africa. In 1970, the typical South African black miner, for instance, got one-twentieth of what a white got. By

1979, it was one-seventh, and by 1984, I don't have the exact figures but it was around one-third or one-fourth.

Now how did this occur? How did these other advances occur?

During this entire time of the improvement American companies following the Sullivan principles took the lead. Second, there was a boom in South Africa, an economic boom, which led to a severe shortage of white skilled workers. So out of economic necessity blacks were allowed into previously all-white job classifications.

Now that should tell us something. What it should tell us is that the key to continuing the breakdown of apartheid lies in the economic advancement of blacks and the economy itself of South Africa. Insofar as this bill would hurt that, we are hurting the very people we wish to help.

I understand and I think it's a truism to say that change breeds desire for more and more rapid change. I think we have seen that all over the world. It's also a truism to say that those who hold power resist change. I suppose that's a rather pessimistic point.

What can we do to improve the situation in South Africa?

I think we can mandate the Sullivan principles for U.S. companies. That's a law that we can apply to U.S. companies and we can do it here.

Despite the fact that banning loans to the Government of South Africa might not be effective, we should ban direct loans to the South African Government as a gesture of disapproval. We should not make South African internal policies a matter of continuing debate in this country's Congress. We are asking for a reaction that will not suit our goals very well.

Substitution effects will render the banning of product exports ineffective. If we don't sell South Africa computers we'll lose American jobs. The Japanese certainly will. Product banning is an empty gesture in my view.

I go back to my question of what can be done. One of the basic mistakes that the South African Government is making is saying, "Look what we're doing; look at the advances we are making; let us alone." Well, they are making some advances. The Government is slow, perhaps too slow for the blacks and the Asians and coloreds of South Africa. But it is also fundamentally wrong to do things that way.

One of the reasons for the success of our constitutional system is that there was public involvement. The Federalist Papers were articles written for the people of the United States so they could debate the Constitution. The United States must encourage the involvement of all the segments of leadership in South Africa in designing a system that will guarantee the security and rights of all the citizens, a system perhaps based on our Federal system. It's important to involve people like Chief Buthelezi, chief of the Zulu Tribe, who has more followers than any black leader of South Africa. These people understand the dangers in violent change.

As Aaron Wildavsky pointed out in a recent article in The Public Interest, we don't know any way to change a system rapidly except by force and violence and we know of no way to deal with the consequences of such change.

CHANGE WILL COME SLOWLY

The answer is, the change will come. It will of necessity come slowly, but to avoid the violence we must encourage the South African Government—and I think Ambassador Nichols is doing this by the way—to involve the leadership of the blacks, the Asians, the coloreds—and all the coloreds. It's not a simple issue. There are Malay coloreds, mixed race coloreds, Indian coloreds—all the coloreds in the process of designing a system that will guarantee the rights and security of all and hence guarantee the interests of the West in maintaining a strong defense against the encroachment of our enemies.

Thank you very much for hearing us and I submit my written testimony for the record.

[The complete prepared statement follows:]

TESTIMONY OF ROBERT J. D'AGOSTINO

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY

I am Robert J. D'Agostino, currently in private practice and legal advisor to the National Legal Center for the Public Interest, a nonpartisan, nonprofit educational organization. I formerly served as Deputy Assistant Attorney General for Civil Rights.

The National Legal Center recently published a monograph on "Disinvestment," which primarily addressed the legal, constitutional, and moral issues raised by disinvestment required by state or local law or through pressure on pension and endowment fund managers. That monograph was not about South Africa or apartheid, although any discussion of divestment inevitably involves some discussion of South Africa and the United States response to its internal policies. The following statement is my own and is not the statement of the NLCPI which does not endorse or approve legislation.

The hearing is concerned with S.635, a bill to express the opposition of the United States to the system of apartheid in South Africa.

In the Christian Century of May 16,1984, South African theologian John de Gruchy stated, "Americans don't like to feel impotent, but it is something you will have to live with. The responsibility for change is ours. Nobody can do it for us."[1]

I do not think even for a minute that Mr.deGruchy is correct insofar as he implies that the United States cannot influence internal events. However, he is saying something to us that is very important. The South African government and the majority of whites who hold the key to power in South Africa are not going to respond to the kind of public coercion and humiliation that Senate 635 proposes. It is a most blatant example of explicit interference in the internal affairs of another country, a country which is no threat to the United States. Those who analogize this to the Nicaraguan situation are either ignorant of the dangers involved in Central America to United States security or refuse or are incapable of making proper distinctions. Certainly, and it must be obvious that the United States can influence the internal affairs of other countries for better or for worse. The United States often and inadvertently influences the affairs of nations for the worst. One only has to look at what the past administration did in Iran and compare the Shah's regime to Komeini's regime. Contrary to some popular opinion, the United States was supportive of the Sandanista takeover of Nicaragua, and although some would still argue that the Somoza regime was worse, I think those are becoming an increasingly small minority. Regardless of whether you agree with what I just said or not, the point I am making is that if the United States is not careful, it may influence matters for the worse, not the better. There is an old saying about how the wise must undue the damage done by the good. Stated another way, the road to hell is indeed paved with good intentions. May I point out the Zimbabwe situation as an example. I have in fact attached as an appendix to this testimony a letter from Bishop Abel T. Muzorewa and a transcript of a press conference held by the Bishop in regard to the

Zimbabwe situation to Albert T. Blaustein, Professor of Law at Rutgers Law School in Camden, who is an internationally known human rights advocate,

Before we as a country go mucking around in the internal affairs of South Africa, we should first ask ourselves, what is the proper end of government and what is it that we wish to see achieved in South Africa. We might ask as Pericles asked, "what was the road by which we reached our position, what the form of government under which our greatness grew, what the national habits out of which it sprang?" In answering his own question, he said, "If we look to the laws, they afford equal justice to all in their private differences; . . . the freedom which we enjoy in our government exists also in our ordinary life."[2] We might express this today thusly, "the object of most Western thinkers has been to establish a society in which every individual, with a minimum dependence on discretionary authority of his rulers, would enjoy the privileges and responsibility of determining his own conduct within a previously defined framework of rights and duties."[3]

It is quite apparent that the system of apartheid in South Africa violates those very principles that the West has been founded upon. It is a totalitarian system, not the most brutal nor the most complete existing in the world, but nevertheless a totalitarian system. It is certainly not a unique system, although based upon race. Many of the governments, particularly some of the neighboring governments to South Africa, have political systems based upon the authority of one tribe over another, which is no less racism nor ethnocentric repression than the South African system.

It is a truism that what brings unrest is change. Things are getting better for the black population of South Africa and all the statistics show that is so. I'll leave the details to others, but a few facts will illustrate my point. Between 1970 and 1979 the wage gap between white and black narrowed in all economic sectors, including mining, industry, construction, retail trade, banks, insurance, and the government. In the mining industry whites earned twenty times the salary of the blacks in 1970, but by 1979, whites earned less than seven times as much. Real wages for blacks tripled between 1970 and 1979. In some of the professions the advancement of blacks and other nonwhites in South Africa has even been more dramatic. In 1979 blacks in the medical profession were earning around 75% of the white salaries. It is no coincidence that in the same time that the blacks have made great gains, two things have been occurring. One, American companies, the signatories of the Sullivan principles, have been equalizing work conditions and demonstrating in a graphic way that blacks can accept the responsibility and do the work that whites can do. Secondly, up until recently, the South African economy was a boom economy which resulted in a severe shortage of white skilled workers. Previously restricted professions and job classifications were suddenly open to blacks because of the economic necessity or because of the growth of black employee unions. May I remind this Committee that black employee unions grew up first in the American companies.

I understand that S. 635 does not prohibit the involvement of American firms in South Africa, but it does prohibit new investment and the importation of South African gold coins. Both of these would be counterproductive. It is American investment that has had the influence on South Africa, not disinvestment. It is the fact that America is a significant trading partner of South Africa that has influenced that country, not any attempt to bludgeon the South African government into doing exactly what we tell them to do. After all, United States policy, as well intentioned as it has been, has not always led to desirable results.

In a most interesting analysis Richard E. Sincere, Jr., discussed the economic facts and political realities of the situation in South Africa.[4] He pointed out the economic dependence upon South Africa of neighboring black ruled countries like Botswana, Lesotho, Zimbabwe, and Malawi. Any weakening of the South African economy, and the action proposed in S. 635 or by the disinvestment advocates generally would be marginal, would fall most heavily on black South Africans and probably neighboring African states.[5] Certainly forbidding the sale of computers to South Africa will only result in the loss of American jobs. The Japanese would be very happy to sell those same computers to the South African government.

As Aaron Wildavsky pointed out in a very interesting article in the recent issue of **THE PUBLIC INTEREST**[6]: "Experience showed that our intellectual ability to measure failure was far greater than our collective capacity to cause success by altering human behavior."[7] Again, and in commenting about the lessons learned from public policy research, Dean Wildavsky stated, "'Steady as she goes' may not be as glamorous as 'full speed ahead', but it is protective of mankind's modest capacity for virtue disciplined by intelligence."[8] Most certainly experience has taught us and the research bears out that "there is little knowledge about how to transform institutions overnight except by force, and none of how to cope with the consequences."[9]

Senate 635 is a bad bill. It will be counterproductive. The United States just does not have as much economic clout as the bill implicitly assumes. Substitution effects will make up for any product boycotts, whether for computers or anything else. The South African economy has substantially slowed so reduction in American investment is meaningless; there already has been a significant reduction in American investment. In fact, if the past is a guide to the future, increased American investment will have more effect on ending the system of apartheid than decreased investment. S. 635 would make South African internal policies a question of debate in the United States Congress. This is a monumental insult to an ally or to any country, whether allied or not. We are inviting the South African government to dig in its heels with such a bill. Insofar as these restrictions would hurt the South African economy, it would put the very people out of work that we are intending to help. I don't believe in putting a man out of work and allowing that man's family to go hungry so that some abstract and high moral principle can be upheld, especially since those who are making the gesture will not have to take the consequences. The very fact that blacks now have jobs with high status in South Africa is accelerating the pace of change and has led the black community to desire more and more rapid change.

At this point in time the following, based on all evidence before me including current news stories, seems true:

1. There has been significant change in South Africa.
2. The change has been primarily in the economic sphere where blacks are far better off today than they were in the past.
3. The change in the political and social spheres has been slow and uneven.
4. The South African ruling elites will resist pressure or obvious pressure to make changes.
5. The pace of change is unacceptable to the blacks and probably coloreds and Asians in South Africa.
6. What we would like to achieve is a change in the system that respects people as individuals rather than judges them by immutable characteristics.

This brings me to what is rather a pessimistic point. This bill won't work; the black community understandably would like to see change accelerated, and the ruling white community is not prepared to see any change except gradual change. This is not a unique situation. People do not take the long view as a rule. What then can be done?

Frankly, I don't believe we can do much more than what we are doing. The Reagan administration's policy of constructive engagement is essentially correct. The crucial element in change is economic. We should actually encourage more investment and more involvement by American companies that support the Sullivan principles rather than less. We should also encourage representative black leaders to come up with a plan that would guarantee the liberty of the people of South Africa. The National Black Alliance led by Chief Gatsha Buthelezi, who is the leader of the Zulu tribe and chief minister of the KwaZulu homeland, is one of many who is both against disinvestment initiatives and against apartheid and for a system of government that will guarantee the rights of all the people of South Africa.

Perhaps through the Endowment for Democracy a group of constitutional scholars will meet with a group of South Africans opposed to the apartheid policies of the government and draw up a proposed political system that will be based on the United States model of federalism -- a system by which no group could achieve domination over any other group and all groups and all individuals would be allowed to develop to their fullest potential without fear of repression or oppression based upon their race or their ethnic or tribal origin. There are many white and black South Africans, as well as colored and Asian South Africans, who would join in such an effort. These people understand the dangers of sudden and violent change and the necessity of reassuring all the people of South Africa that their rights will be protected and their futures will be secure.

President Reagan is right. The United States should be a shining beacon to the world. We can look back into our own history and know that part of our greatness lies in our pluralism, our respect for the rights of all, and a system that does not allow transient majorities or the passions of a majority to trample the rights of others. Nor either is the tyranny of a minority permitted. Keeping these principles in mind and keeping in mind the inadvisability of direct interference in the internal affairs of nations that are no threat and in fact a defensive help to the United States, we can still act as the example that President Reagan mentioned. We must do so quietly, gently, with the cooperation of those leaders in South Africa who share our vision of individual rights and liberty and a strong and secure West.

This Congress would better serve the interests of the United States and human rights by a positive, cooperative gesture than by passing a punitive and insulting law that will only lead to more hardships and resentments.

May 24, 1985

FOOTNOTES

1 "How Oppose Apartheid?", The Christian Century, May 16, 1984, p. 514.

2. Thucydides, The Peloponnesian War, ii. 37-39, trans. R. Crawley (Modern Library ed., p. 104).

3. Frederick Watkins, The Political Tradition of the West (Harvard University Press, 1948).

4. Sincere, The Politics of Sentiment (Ethics and Public Policy Center, Washington, DC, 1984).

5. Id, pp. 95-98.

6. Aaron Wildavsky, The Once and Future School of Public Policy, Public Interest, p. 25, ed. seq. (Spring 1985).

7. Id., p. 28.

8. Id., p. 31.

9. Id., p. 35.

THE UNITED METHODIST CHURCH

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19 March 1985

Dr Albert P Blaustein
Professor of Law
Camden, New Jersey 08102

Dear Brother Albert

Thank you for everything you did for me while in your country. Todate we are still stranded as I was when I was there in November 1984.

I received the clipping you sent me. I do not know from what newspaper, but it is true 5 of some of my top organisers were murdered by ZANU(PF) on the train. The ZANU(PF) had tried the whole day to try and disrupt our rally in Hwange, but after they had failed, they worked to kill them at the railway station before they returned to Bulawayo.

It has been confirmed by police the assassins were ZANU (PF) and they pretend to bring them to court. I say pretend because there are many people who do all sorts of evil things to our people, caught by police, but freed at the instruction of somebody above.

I have enclosed these statements just for your information. The international Press attended in great numbers and at short notice the Press Conference where I told them about the cold blood murder.

So far Mugabe has set in motion Hitler and Idi Amin extremely evil and treachery machinery which makes the most terrible mockery and democracy.

Wish you the best of everything.

Yours sincerely

Abel

Abel

UNITED AFRICAN NATIONAL COUNCIL

PRESS CONFERENCE 23-02-85

Mr Chairman, Ladies and Gentlemen. Recently local and international journalists have sought interviews on circumstances surrounding the run up to the forthcoming general elections.

Accordingly, and in order to save me time from giving individual interviews whilst at the same time asnwering many such questions, I have decided to call this press conference. From the outset Mr Chairman, let me point out that the freedom and fairness of the next election is not supposed to start and end on the polling day itself. But the whole process leading to the election must be seen to be free and fair.

The fundamental rights and freedoms which must prevail and be upheld before and during the process leading up to free and fair general election are universally acknowledged and enshrined in our constitution as follows:-

1. The freedom of expression. That is to say, freedom to hold opinions and to receive and impart ideas and information without interference and freedom from interference with one's correspondence.
2. The freedom of assembly and association. That is to say, one's right to assemble freely and associate with other persons and, in particular, to form or belong to political parties or other associations for the protection of one's interests.
3. The freedom of movement. That is to say, the right to move freely throughout Zimbabwe, the right to reside in any part of Zimbabwe, the right to enter Zimbabwe, the right to leave Zimbabwe and immunity from expulsion from Zimbabwe.
4. Security of the person.
5. Protection by the law.
6. Protection for the privacy of one's home and other property.

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Mr Chairman, although all the above rights and freedoms are enshrined in our Constitution, I regret to inform you that all these, without exception, have been and are being constantly violated by both the ruling party and its government either acting individually or in unison.

The following examples and explanations serve to illustrate the degree and extent of violation of these rights and freedoms which I have already cited.

Some examples of the violation of freedom of assembly are as follows:

1. On July 4, 1982, Anglicans in Mutare were driven away from the Holy Communion table during mass and then driven out of church, and forced to go to attend the ruling party's political rally. On the same date Hilltop United Methodist Church congregation in Mutare was prevented by a wild and mad ZANU (PF) mob from attending a church service, and they destroyed the pastor's house.

2. On July 31, 1982, the ruling party accompanied by 3 uniformed policemen went to savagely attack innocent worshippers at night at the St Mark United Methodist Church in high density suburb of Highfield. Other church denominations have been prevented from holding church services at various intervals and at different places throughout the country between 1981 and 1985.

Examples of the violations of the freedoms of expression, and of association are as follows:

1. Since the day Zimbabwe gained independence from Britain at mid-night, April 18, 1980, until this very day and hour as we are here, practically every U A N C rally and those of other political parties other than ZANU (PF) have been disrupted by ZANU (PF). These violent, destructive, murderous, unprovoked attacks on other political parties' rallies have been organized and financed from high above, even at Central Committee level. One of the best examples of this is the most recent attempted assasination of Dr Joshua Nkomo in Masvingo.

2. The ruling party has not confined themselves since independence to going to attack other political parties whenever such parties are holding legalised rallies and meetings but have been attacking even innocent mourners at funerals using their usual lethal weapons of

guns, knives, knobkerries, swords, catapults, axes, spears, picks and grass slashers. This is despite the fact that the ZANU (PF) knows that African funerals are attended by great numbers of people and that many testimonial speeches are made at each funeral to console the bereaved.

We are highly distressed and concerned that whilst the nation and the world have been repeatedly hearing the hypocritical and double-standard outcry about "dissidents" and their "atrocities", what the nation and the world have not been simultenously told are savage murders by the ruling party, not in the bush, but at legalized rallies, meetings, churches, religious, social, and cultural gatherings; in their homes, at weddings and funerals, in broad day light,and at night in the interior and urban centres of our country including in cities such as Harare, Bulawayo, Mutare, Gweru and Kwekwe. So, Mr Chairman, political violence has been the order of the day from Independence day to date and always without exception these violent activities have been initiated by the ruling party. The U A N C has documented and catalogued these atrocities and on several occassions presented these facts to the government but our pleas met with contempt, were ignored or were suppressed. If anyone doubts this sad commentary of violent activities and rule of terror by the ruling party they should go to Highfield high density suburb and see the number of houses of other political parties which have been stoned by the ruling party this week.

This all goes on to illustrate that in Zimbabwe there is definitely and categorically: no security of one's person, no protection of the law and no protection for the privacy of one's home and other property.

In Zimbabwe there is no freedom of movement. We have been reliably informed that: the ruling party has instruction from highest authority to the effect that the ruling party should actually disrupt the leaders and officials of other political parties. Recent demonstrations in Masvingo, Chinhoyi and other places against Mr Nkomo are cases in point. In effect NO GO areas for other major parties have been created. For example, Dr Eddison Zvobgo speaking in Masvingo on February 9, 1985 said that no representative of any other party should set foot in Masvingo, and if any do,

4/....

that should be considered a provocation to the Karanga people. Here is one of the ZANU (PF) parliamentarians, who is supposed to uphold the fundamental human rights and freedoms as enshrined in our Constitution, who is, in this instance and in other cases, violating the freedom of movement and of association in Zimbabwe of various ethnic groups. We can read here that he is dividing the people of this country into "Karangas" and other ethnic groups.

Mr Chairman; up to this point I have demonstrated beyond reasonable doubt the sad and tragic fact that Zimbabwe is an INDEPENDENT COUNTRY WITHOUT FREEDOM. And the world must not mislead themselves into believing that just because Zimbabwe is an independent nation, that we its citizens are therefore free, because we are not. But we are like the legendery Kunta Kinte.

Mr Chairman, the violations of human rights and freedoms which I have pointed out above, combined with the additional points which I am about to tell you, are not conductive to holding free and fair elections.

1. We currently have reliable information and irrefutable evidence to the facts that over 40 000 members of the ruling party controlled Youth Brigade have been deployed nationally, fully equipped, instructed, supported and financed by the government, and have started cold and calculated politically motivated intimidatory and terrorist campaign in rural areas.

2. The Special Constabulary which in fact is ZANU (PF)'s political police force, using government uniform and facilities have also already been deployed for intimidation purposes, and are already carrying out undemocratic, biased and suppressive activities.

3. The Fifth Brigades which is ZANU (PF) political army which also uses government uniform and facilities, is also deployed for intimidation of all other political parties except ZANU (PF). The Fifth Brigade, in Shona, is called "Gukurahundi" which means "chaff-cleaner".

This means they are supposed to regard people as chaff and can intimidate, harass and treat people as we do with chaff.

4. The U A N C has had several applications for holding political rallies turned down whilst ZANU (PF) are being permitted to hold as many rallies as they wish to.

5. Our public statements are suppressed and the only time the local news media (i.e. radio, television, and most of the newspapers) publish anything about us is when it is either something very distorted or blatant lies or character assassinations. A case in point is the article which appeared on the first page of the Herald of February 5, 1985 when it was stated that I was in Bulawayo and failed to address a meeting because of demonstrations whilst infact I was in Harare that whole weekend.

Mr Chairman, with such overwhelming evidence of irregularities the inescapable conclusion must therefore be passed, that the forthcoming general election is frought with lack of freedom and fairness. However, not withstanding this conclusion, the U A N C is still determined and resolved to contest all the 80 seats.

Finally Mr Chairman, I shall briefly address myself to the issues in this forthcoming general election. The real issues in this campaign are in our view as follows:-

a) The ruling party's intention to introduce the even more oppressive, repressive and opportunistic one party dictatorship, but we the U A N C are proposing and advocating a multiparty democracy.

b) The impoverishing economically suicidal so called scientific socialism which is none other than a road to poverty and economic ruin, the U A N C wants to introduce the enriching, and rewarding mixed economy which can lead our country to prosperity.

c) Establishment of peace and unity for our nation as advocated by the U A N C versus continuation under a Prime Minister who has totally failed to create and implement peace and unity for the nation. He has dismally failed because he is often highly divisive himself in speech, recrematory and vindictive in his approach.

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d) The U A N C wants to make Zimbabwe an independent country with FREEDOM. ZANU (PF) has so far made Zimbabwe an independent country without FREEDOM. One of the saddest things about the present government is that they think that just because we are an independent nation we are automatically "free", not realizing the fact that in more ways than one, in terms of freedom, we are now even worse than we were under colonial regime, maybe worse than racist South Africa, and worse than Amin's Uganda. Zimbabwe has been totally deprived of the freedom she won by self denial and supreme sacrifice. And U A N C wants to restore that freedom.

e) Today in Zimbabwe, people hate each other, in a manner and degree unprecedented. In a culture of extended families which derive a lot of joy, cohesion and unity, our people are being trained to hate anyone who is not a ZANU (PF) card carrier regardless of whether the person may be a brother, sister, mother, father, friend or whatever relationship one may have. The U A N C wants to usher a new era of love, unity, mutual respect and peace among all our people.

THIS IS YOUR LAST CHANCE TO SAVE ZIMBABWE!

Thank you Mr Chairman, Ladies and Gentlemen.

Bishop A T Muzorewa
PRESIDENT: U A N C

Senator **Heinz**. Thank you very much, Mr. D'Agostino.

I note that during the course of the statements of the panel a number of our other colleagues have arrived—Senators Gorton, Mattingly, and Cranston. Do you have any opening statements that you would like to make at this time?

If not, let me thank all the witnesses for their testimony. I have a couple questions for Mr. Hackney and Mr. Bok.

Your position as individuals—not representing your universities I understand—seem fairly much identical to me. Let me be clear, though, for the record.

You are saying that while you support S. 635, if S. 635 actually legislated disinvestment, would you support it or not?

Mr. **Bok**. No. I think if the legislation either required the immediate disinvestment by universities in all stock in American companies doing any portion of their business in South Africa or if it required all such companies to leave South Africa, I do not believe that I could conscientiously support that bill.

Senator **Heinz**. Dr. Hackney.

Mr. **Hackney**. I agree with that, yes.

Senator **Heinz**. If you became convinced—contrary to the views that you may hold today—that the result of the prohibitions on investment by American firms and their subsidiaries in South Africa would nonetheless bring about disinvestment of those firms, whether it was intended or not, would you still support that approach, the one in S. 635?

Mr. **Bok**. If this legislation brought about disinvestment?

Senator **Heinz**. The sponsors of the bill—Senators Kennedy and Weicker and others—say their legislation is not aimed at bringing about disinvestment and I'm certain they are sincere in that position, but if the effect within 2 or 3 years of enactment was to, because of the way things worked, whatever that may be—were in fact to bring about disinvestment by those firms so affected by the legislation, pulling out in effect of South Africa, then would you think we would be wise to enact S. 635 in its present form?

Mr. **Bok**. I'd like to help, but I find that so unlikely that it's very difficult for me to respond to a hypothetical question that seems to me on its face by my calculations very unlikely to come about. I just can't make my mind work that way.

Senator **Heinz**. You don't want to answer a hypothetical question?

Mr. **Bok**. Well, not a hypothetical question that seems to be really so disconnected with the likely course of events flowing from this legislation as I see it.

RESULTS OF SWEDISH BAN

Senator **Heinz**. Well, let's deal with the history then. Sweden imposed a ban similar to that proposed in S. 635 in 1979. If I were to tell you that at the time there were 31 Swedish companies in South Africa who then employed 5,500 individuals and that by 1984, 5 years later that policy had resulted in the disinvestment by half of the companies bringing the total number of Swedish companies in South Africa down to 17 employing 2,800 South Africans, would you continue to believe that the result that I described a minute ago was unlikely?

Mr. **Bok**. Well, I guess the only answer I could give is that I think Sweden is a very different country from the United States. I have some familiarity with Sweden. Both of my parents-in-law served in Swedish Cabinets. And knowing what I do about Sweden, I would want to investigate very carefully to see whether there is indeed a causal connection between that legislation and the departure of those firms or whether there weren't various other circumstances involved that might have led to the decision to withdraw.

Senator **Heinz**. Dr. Hackney.

Mr. **Hackney**. I generally agree with what Derek said. If I were to become convinced, however, through your persuasive arguments and evidence that indeed the immediate result of this legislation were to cause disinvestment, I would think that that is not a wise step at the moment for the American Government to take.

I do not believe, however, that such is the case. At some future time it might be a wise step to take.

Senator **Heinz**. Let me ask both of you this. Since U.S. companies in South Africa employ well over 100,000 workers in South Africa and since jobs for the 65,000 blacks working for U.S. companies in South Africa are among the best paying and most likely to provide additional education and job skills, and since a no-new-investment or bank loan policy for U.S. corporations operating in South Africa is likely to lead to a relative decline in U.S. economic presence there, even if for the sake of a hypothetical argument it doesn't lead to disinvestment, other evidence to the contrary, isn't it true that blacks and other blameless third parties are likely to be harmed by the policy which is promulgated in S. 635?

Mr. **Bok**. Let me try to respond. Since American investment has not been rising in recent years, it's a little hard to know whether even this bill is going to materially reduce the amount of that investment. Nonetheless, I think the overriding question is: What can the United States do that will maximize whatever possibilities exist for peaceful and constructive change in South Africa?

I think that American corporations may have a role to play, but because the number of employees that they have is so small relative to the total population, I think the constructive role that they can play is as an example. I do not believe that under any plausible estimate of future events American firms are going to expand in South Africa to the point where they are going to have more than a tiny portion of black employees and I believe the advantages that can result from the example that American firms play can be fully achieved with the amount of investment that we already have in South Africa.

Therefore, increasing that amount is not likely to make any material difference to the future course of political events in that country.

I also fear that one other matter may occur if American investment increases in South Africa which seems to be very much on the negative side, and that is, the more American investment that you have there, the greater financial and economic stake we have in conditions in that country and the more likely we are to put ourselves in a position where there may be a conflict of interest between our economic interests in this country and what we really feel we should do on principle as a country whose ideals are deeply opposed to apartheid. So I think there's some risk in allowing the level of American investment to reach a point where we have really very strong potential conflicts between economic interests and those ideals which seem to me central to the American creed.

Senator HEINZ. I don't want to debate that particular premise with you. It seems to me that it, however, proceeds from the notion that a large U.S. presence in a country will always side with the forces of darkness which may bring about a cataclysm ultimately and the American presence somehow will never be wise enough or enlightened enough to see what is in its long-term best interest.

I think everybody who studies the South African question worries about one thing, and that is, left to its own devices, will the South African Government, in addition to pursuing policies that we find morally repugnant, bring about its own bloody destruction. It seems to me that a lot of people do believe that. I think it's a very big risk, and that it wouldn't be unique for American business people to believe that it is a risk also and, therefore, they would have an interest in peaceful change. There is a limit to the time period in which a white minority can suppress a large and growing black majority.

So I don't know that I would like to grant your premise. I don't want to get into an argument.

TIME IS RUNNING OUT

Mr. HACKNEY. Briefly, I think you put your finger on the right element here, which is time. You are suggesting a model of change that might indeed take place with increased American investment and development in the economy perhaps over a long period of time, but I think the events of the last 9 months or so make it clear that we really probably don't have that time. So one should be looking for what modest steps might be made that don't immediately harm the victims in South Africa and will induce or encourage change from the South African Government. That's how I come to support S. 635.

Senator HEINZ. Thank you. One last question for Mr. D'Agostino. Mr. D'Agostino, in your testimony you made the statement that it was basically wrong to debate the internal repressive antihuman right, antiwhatever we want to call them policies of another government. You said it was destructive of us to do so in the case of South Africa because, as I remember what you said, it caused them to dig in their heels.

If I applied that principle generally, I guess I would never criticize the Government of Nicaragua for what it is doing. Why isn't your admonition a selective admonition and invalid?

Mr. D'AGOSTINO. Well, let me answer that in two ways. One, the case of Nicaragua involves a threat or a long-term threat to the security of the United States because of what they are doing in Central America. The second thing is, of course, South Africa is an ally. What I said is that under this bill South African internal affairs is a matter of continuing debate in the U.S. Congress. It's not so much that we debate the problem. I think it's good that it's debated and we say we don't approve of apartheid. But the bill says the President can come back to Congress and say, "Guess what, South Africa is behaving better now." It then goes back for a debate in the Congress. It's like the U.S. Congress is an oversight agency for the South African Government and the policies of the Government. It's not a question of merely debating its policies, which is fine and I think appropriate. It's a question of being in a position, because of this law, of being able to approve or disapprove step by step what the South Africans are doing and almost saying we are going to supervise your improvement. It's much more a psychological point here than anything else.

Yes, we should debate these policies and say they're wrong. No, we shouldn't put ourselves in the position I think we are, supervising and telling them how to do step by step what they ought to be doing. We haven't had a lot of success in other countries—Iran, for instance, and Cuba.

Senator HEINZ. Thank you. Senator Proxmire.

Senator PROXMIRE. Thank you very much, Mr. Chairman.

Mr. Schotland and Mr. Bok, I hestitate to even try to correct the president of Harvard University on anything and you may be absolutely correct and I may be wrong and Mr. Schotland may be correct and I may be wrong. You gentlemen agree on this point but I think you are both wrong.

You say, speaking of S. 635, "The bill bans loans to the South African Government and Government entities but not to others in South Africa."

LOAN PORTION OF S. 635

Now let me read you from the text of the bill, section 4(a):

> The President shall no later than 90 days after date of enactment of this Act issue regulations prohibiting any United States person from making directly or through a foreign affiliate of that United States person any investment including bank loans in South Africa.

Then there's a further statement,

> The term investment in South Africa means establishing or otherwise investing funds or other assets in a business enterprise in South Africa including making a loan or other extension of credit to such a business enterprise, the private sector as well as the Government.

There is one exception and the exception is that loans can be made to the Government provided they are loans for housing, health, or education and on a nondiscriminatory basis.

Now if I misstate that, you show me in the bill where I'm wrong.

Mr. BOK. Well, I think the statement that I made was that I hoped that the bill would be clarified to make that clear. All I can say is you may be right, but in reading the bill last night in preparation for this testimony, it wasn't as clear to me as I would have liked. I have also seen the bill described in other publications as simply prohibiting loans to banks. And so I didn't mean to say that the bill was other than you stated. It did seem from my reading, which may have been wrong—but it did seem from my reading not to be entirely clear and thus my statement was that I hoped it could be clarified so you could extend that prohibition more broadly.

Senator **Proxmire**. Mr. Schotland.

Mr. **Schotland**. Senator, this is turning into a pretty good law class. I don't know how many of you were struck when a former law professor revealed disquiet about handling hypotheticals. [Laughter.]

I agree with what President Bok has just said. We're at the stage where the question isn't exactly how one reads the bill but how we ought to make it read to say what is intended. If the intention is to bar more than loans to the South African Government and affiliates, then I submit that section 3, which was not in the portion you attended to, ought to be expanded to expressly authorize the President to bar further loans if he so finds necessary.

At present, the specific of section 3 on loans might override the much looser, broader general of the section you pointed to and I think, therefore, I agree completely with your intent and with President Bok's and my own wish that if there is to be a bar on loans it ought to be across the board, not as now where the only signal we're sending is that we're showboating.

Senator **Proxmire**. I thought we were making that as express and as explicit as possible. I can see why the chairman of this subcommittee and I both went to the Harvard Business School and not the Harvard Law School.

Mr. **Bok**. There's always time to rectify that.

Senator **Proxmire**. I'm sure I couldn't get in now. I could have gotten in in those days.

Senator **Heinz**. I hope they have a good work-study program. [Laughter.]

Senator **Proxmire**. May I say, Mr. Schotland, you referred also to the Lugar bill which you said contains the Sullivan principles and that S. 635 didn't. S. 147 the bill that Senator Sarbanes and I are also cosponsoring does contain Sullivan principles.

Mr. **Schotland**. I applaud that, Senator.

Senator **Proxmire**. Very good. Thank you.

President Bok, an argument made by opponents of limited economic sanctions proposed in S. 635 is that moving beyond the Reagan administration's policy of constructive engagement or quiet diplomacy will make the white regime even more intransigent and reduce the chances for peaceful reform. You say however on page 5 of your testimony,

> Opinion polls of South African whites indicate far greater support for change than anything promoted recently by the regime. Such trends suggest the opportunity for pressing the regime to take bolder steps toward reform.

Do you think that enactment of S. 635 would make the whites in South Africa more cognizant of the urgent need for reform in South Africa and have a positive effect?

Mr. **Bok**. Well, I want to be as candid as I can and recognize that the problem of how one country can increase the possibilities of constructive reform in another is an extremely difficult enterprise. I can't claim to be certain. I think all one can do is make the best estimate that one can.

In my opinion, it is too easy to interpret our present policies as a kind of tacit acquiescence with the status quo or at least not caring very much about the status quo.

I think the sanctions of the kind proposed in the Kennedy-Weicker bill simply cannot be interpreted as tacit acquiescence of the status quo. They make a much stronger statement.

To the extent that that is communicated, as I'm sure it will be, because all official emanations from the United States involving apartheid are communicated widely in South Africa, I think that this message will necessarily get across to large numbers of white South Africans; yes.

SIGNAL TO THE BLACK COMMUNITY

Senator PROXMIRE. President Bok, do you think that even if the legislation did not have a positive impact on the white community in South Africa, do you think it is worth enacting to give a signal to the black community in South Africa of where America stands on apartheid?

Mr. BOK. I think that certainly would be a positive result of the legislation as well and it would be an independent benefit even if the first message did not get across.

Senator PROXMIRE. Now opponents of the limited economic sanctions proposed in S. 635 often note that blacks in South Africa are better off than blacks elsewhere in Africa. Indeed, Mr. D'Agostino has made that implication.

You note, however, on page 5 of your testimony that South Africa's homeland resettlement policy has forced 3.5 million blacks to move to crowded Bantustans where the economic and living conditions are poor and the infant mortality is the highest in the African Continent.

Can you tell us how many of the 22 million South African blacks are forced to live in these so-called homelands and what conditions are like for blacks in those areas?

Mr. BOK. I believe that there are some 11 million blacks now living in the homelands. I would point out that a Government commission in South Africa in the 1950's estimated that the total number of people that could be supported in the homeland territories was 2 million. So you have over five times the maximum number now residing there.

We do have reports from the Carnegie Foundation with respect to the proportion of nonwhite families below the poverty line. I can't testify as to exactly what measure of poverty they use in South Africa, but I think it's instructive to note that by their standard the number of families below the poverty lines stands at 7 percent in the cities, 13 to 14 percent in the countryside, and 80 percent in the homelands, thus indicating the relative deprivation that exists.

The proportions of nonwhite children suffering from malnutrition and stunted growth is high for nonwhites throughout South Africa and much higher in the homelands.

A lot of those statistics as well as impressions by qualified people are captured in a report submitted by David Hamberg who is a doctor and now president of the Carnegie Corp. in New York, entitled "A Personal Perspective on the Second Carnegie Inquiry Into Poverty and Development in Southern Africa."

Senator **Proxmire**. Will you make that report available to us so we can have that printed in the record?

Mr. **Bok**. I will submit that for the record.

[The following report was subsequently submitted for the record:]

A PERSONAL PERSPECTIVE ON THE SECOND CARNEGIE INQUIRY INTO POVERTY AND DEVELOPMENT IN SOUTHERN AFRICA

David A. Hamburg, M.D.
President
Carnegie Corporation of New York
May 13, 1985

In April of 1984, I led a Carnegie Corporation delegation of seven people to participate in a conference reporting the main findings of the Second Carnegie Inquiry into Poverty and Development in Southern Africa. We also visited several parts of South Africa, especially to see at first hand the manifestations of poverty which the Inquiry had examined. The visit proved to be highly informative, surprising in some ways, and deeply moving for all of us.

The Second Inquiry into Poverty and Development in Southern Africa was initiated by the Carnegie Corporation of New York in April of 1982. Based in South Africa at the University of Cape Town, it is directed by Dr. Francis Wilson, a labor economist and head of the Southern Africa Labour and Development Research Unit (SALDRU) at the School of Economics.

The Inquiry has three main objectives:

1. To collect and collate up-to-date facts about poverty and the process of impoverishment in South Africa;

2. To generate public debate on the causes, nature, and extent of poverty in Southern Africa;

3. To stimulate thinking and action on strategies against poverty and on ways of facilitating equitable development in the region in both the short run and the long run.

The aim ultimately is to contribute toward shaping a more just and peaceful society in Southern Africa.

The Inquiry is drawing upon the knowledge and research of a network of scholars and professional persons in law, medicine, economics, religion, and other fields throughout the country, as well as community leaders, teachers, and social workers who have first-hand knowledge of poverty and the process of impoverishment at the local level. The intention is to ensure the widest possible participation in the study from all segments and races in southern African life. More than twenty universities in the region have participated in the study.

The Inquiry ~~is~~ viewed in South Africa as the most exhaustive survey of the causes and consequences of poverty in southern Africa since the Corporation-sponsored study of poverty among whites carried out fifty years ago. Popularly known as the Carnegie Poor White Study, the earlier study succeeded in stimulating actions that helped the Afrikaner poor overcome their conditions and become part of mainstream South African society.

The current study is not confined to the study of the people of any one race classification in southern Africa, although poverty in the 1980s is endured almost entirely by black people--African, Coloured, and Asian. Poverty is being studied in relationship to land use, law, food and nutrition, health care, education and training, transport, housing, social welfare, and other quality-of-life indicators. It is also being studied for its effects upon families, migrant workers, women, children, and the elderly. Overshadowing all is the role and impact of the official policy of drastic racial separation known as apartheid.

Interim findings of the Inquiry were presented at a Conference on Poverty and Development held in Cape Town April 13-19, 1984, to which more than 300 papers were presented by participants. The conference also exhibited a collection of photographs of the southern African poor, entitled "The Cordoned Heart." A film festival taking as its theme "Signs of Hope" brought together a great deal of information about development lessons from other countries.

The proportion of families who live below the poverty line is about 7 percent in the cities, 13-14 percent in the platteland, and 80 percent in the reserves or homelands. There is poverty all over South Africa, but it is the rural areas, where most black people live, that it is most acute. Poverty in South Africa, according to the conference papers, is "decisively affected by apartheid." Its dimensions are particularly affected by land laws, pass laws, and the housing policy of the Nationalist government and earlier governments. Unforeseen circumstances like drought play their part, but severe poverty in South Africa has a deeper origin in the economic and political structure of the society.

The Inquiry reports that there has been a great increase in poverty in South Africa over the past 20 years, largely as a result of the accelerated implementation of "Grand Apartheid," wherein blacks are deprived of their South African citizenship and deported to the reserves set aside for their particular ethnic affiliation. These reserves, or homelands, have become "dumping grounds" for "economically redundant" people. (One paper referred to these people as "the discarded and dispatched.") According to the Inquiry reports, the number of people made destitute by landlessness and unemployment has risen from 250,000 in 1960 to 1.43 million in 1980. The number living below the poverty line but having some income has reportedly increased from 4.9 million to 8.9 million--about one-half the population of blacks in South Africa. Eleven million blacks comprising 37 percent of South Africa's population are being crowded into the ten officially autonomous homelands that make up only 13 percent of South Africa's land area. There is insufficient arable land or infrastrucutre to yield an adequate income for the families living there. Traditional subsistence agriculture is collapsing with the overcrowding.

Inquiry studies of the migrant labor system reveal its devastating impact on families. One-quarter of black women in

South Africa are separated from their husbands because of influx control regulations and the pass laws that regulate the movements of workers. Many children of homeland areas are growing up barely knowing their migrant laborer fathers who visit home only once a year. Adverse child development and high crime rates are a part of this picture. Quite apart from the mental health consequence for families of such family fragmentation, it is more costly to maintain split families than a united family.

Whites in South Africa enjoy approximately the same longevity as Americans, and the same health standards, and commensurate access to increasingly technological health care. Most blacks, by contrast, especially in the rural areas, suffer from a very heavy burden of illness. Communicable and other serious diseases take the lives of a great many South African infants and handicap for life those who survive. One-third of African, Coloured, and Indian children under the age of 14 in South Africa are underweight and stunted for their age because they do not get enough to eat. The infant mortality rate in Soweto is three times higher than that of whites. Forty-five percent of Sowetan children who reach the age of ten suffer from malnutrition, 59 percent from stunted growth, and 24 percent from "wasting." Doctors who examined children at three large schools in the Gazankulu homeland of the Northern Transvaal found that four out of ten had nothing to eat before coming to school that day, and nearly one-half needed treatment for tuberculosis.

In my view, poverty is partly a matter of income and partly a matter of human dignity. It is one thing to have a very low income, but to be treated with respect by your compatriots; it is quite another matter to have a very low income and to be harshly depreciated by more powerful compatriots. Let us speak then of human impoverishment: low income plus harsh disrespect. This condition jeopardizes survival in the most fundamental terms--e.g., it drastically increases infant mortality, increases the burden of illness in many ways, and shortens life expectancy. But it does even more. It gravely jeopardizes the most fundamental human attachments to family, friends, home and community; it undermines self-respect and a sense of belonging; it makes life profoundly unpredictable and insecure; it erodes hope for future improvement and the sense of worth as a human being.

Thus, to speak of impoverishment in this sense is to speak of human degradation so profound as to undermine any reasonable and decent standard of human life--measured by whatever religious, scientific, or humanitarian standard. Any outlook of human decency in any part of the world is inconsistent with the persistence of such impoverishment in the twenty-first century. Tragically, it is widespread in contemporary South Africa despite the many advantages of that nation--e.g., its abundant natural resources and beauty, its democratic heritage from Britain, and its easy access to modern technology.

South Africa's problems, though distinctive, are not unique. Therefore, the Inquiry is an enterprise which should not only be useful in South Africa, but throughout the world. The problems addressed so effectively in the Inquiry are of great significance in many countries, including our own.

I invited a rather large delegation of Carnegie colleagues to accompany me to the Inquiry. That they accepted with alacrity reflects the importance we attach to this subject and the respect we hold for those conducting this Inquiry. All of us were deeply affected by our visit. We were on a rapid learning curve. We were informed, stimulated, sometimes shocked, and brought to a renewed dedication to tackle the horrendous problems of human impoverishment in the constructive spirit of this Inquiry.

Beyond the conference, we made a two-day journey through the Ciskei--a journey which transformed the dry language of the statutes and the abstract findings of the Inquiry into a drama of profound human impoverishment, especially in isolated and desolate resettlement camps. My colleague, Helene Kaplan, chairperson of our board of trustees, gave an insightful presentation of this visit at our board-staff retreat in May and I quote some of her remarks here. "Throughout our tour of the Ciskei, I kept remembering Desmond Tutu's words, when we met with him and other Black leaders in Johannesburg on our first day in South Africa. He said that our visit to South Africa would be a course in Human Ecology--a lesson about the sad wastefulness of human resources. Repeatedly, those words haunted me as we saw evidence of the findings which were presented at the Carnegie Poverty Inquiry:

malnutrition, family disorganization, destruction of people's possessions and buildings, squalor of the resettlement camps which desecrate the natural beauty of handsome countryside, and the sad idleness of human beings who literally have been "dumped like refuse," as one Black leader we met expresed it. We witnessed a countryside of human beings who had been placed "out of sight"--and were therefore "out of mind" for most White South Africans. The Ciskei must be viewed in the context of a web of laws, customs and policies concerning Black Africans which have had as their fundamental goal the relocation of as many Black Africans as possible into the "homelands" and prevention of those who were there from coming to the cities."

"During our two-day trip, we visited seven resettlement camps--Potsdam, Ndevarra, Pakamisa, Tswela Tswille, Dimbaza, Whittlesea, Oxton--some as old as 10 years or so, before Ciskei became independent, others more recently established; but all housing those relocated from other rural areas, often quite far away. And many continuing to receive new arrivals. As we moved from place to place, I anticipated that surely the next location could not be worse--but inevitably it was, either because of greater numbers of people in the area, or less fertile land; or a greater sense of isolation and impoverishment. In each such settlement, we visited nursery creches, soup lines, health clinics, pitifully meager sewing or garden or handicraft projects--each sponsored by one or another church or charity organization--Lutheran, Evangelical, Anglican, Catholic--and all trying, against virtually impossible odds, to feed malnourished children, to treat illnesses associated with severe poverty and to lend some dignity and meaning to people's lives."

"Each such location was situated in arid, infertile land--in some cases almost desert type conditions. The housing was basically the same--either shacks made from wooden packing cases with metal roofs, or corrugated metal shacks. We were told that all had been designated as "temporary"--but in some cases that referred to settlements going back to as early as 1970! So these so-called temporary quarters have become permanent dwellings--hot in summer and freezing cold in winter. In each such area, there were four to six such shacks which shared a pit latrine--each such shack often housing as many as ten or more persons."

"Although the details of each place may have varied, the underlying theme remained constant--the callous disregard for the physical and spiritual needs of these people--and the devastation and human suffering which has resulted from the conscious and unrelenting dislocation of an entire culture."

It is not possible to say precisely how many people have been forced to move into such camps since 1970, though serious efforts have been made despite official obfuscation. Suffice it to say the appropriate metric is in millions, not thousands. Few South Africans, let alone Americans, have visited these camps. The sights and sounds and smells of the camps will be with us for a long time. Perhaps it is excessive to characterize them as "concentration camps," but that is the term that reverberated through our group as we saw the repressive squalor and the grossly malnourished children all around us.

On June 16, 1976, the "children's uprising" in Soweto marked the beginning of a new period of black protest and violent government response which continues to this day. Not since the "Sharpeville Massacre" in 1960 had there been such a large outpouring of community anger and fierce government retaliation. In the immediate aftermath of Soweto over 800 black South Africans were killed, most of them children. The vehemence of this reprisal had a sobering effect on all South Africans, cautioning blacks and disturbing the complacency of whites.

The tenor of debate changed in South Africa after Soweto, and even the government was forced to acknowledge the need for "reform"--though without conceding any of the fundamental changes sought by the black community. But the government's old adherence to the purity of Afrikaner racial ideology had begun to falter, and Soweto was followed by a change of Afrikaner government and by other deep splits in Afrikaner hegemony.

This is not meant to suggest that the South African government has embarked on a clear program of social and political reform. In fact, the continuation of the "homelands" policy is designed to "partition out" the vast majority of black South Africans, both by physically removing them to rural wastelands and by stripping them of their South African citizenship. This process has continued unabated until the present day, with vast and harsh human consequences. Nor do the recent "constitutional reforms" signal a government willingness to accept responsibility for black social and political participation. The new constitution is a continuation of racially divisive policies designed to maintain white domination.

Impoverished people are at high risk of suffering from a wide variety of diseases, prominent among which are infectious diseases. This latter point is tragically ironic in view of the fact that infectious diseases have been drastically diminished in technically advanced societies--and South Africa is after all a technically advanced society, at least in part. In Europe, North America, and Japan, infectious diseases have yielded to a constructive combination of adequate nutrition, clean water, efficient sanitation, immunizations, antibiotics, and decrease of over-crowding. Altogether, this decline in infectious diseases represents the greatest health progress made in human history.

South Africa could catch up in health with other technically advanced countries in a relatively short time--to the great benefit of its own people and its future as a nation. There are many useful interventions for this purpose that are not expensive. Indeed, their efficacy has been demonstrated scientifically and in large-scale practice in many countries all over the world, some of which are less technically advanced and less affluent than South Africa. The conference was replete with the data necessary for such interventions, and illuminating steps toward a coherent strategy.

The Inquiry showed that a great many South Africans still cannot take for granted their ability to meet basic adaptive needs: food, water, shelter, and other factors essential for survival and human dignity. Why are there still widely prevalent threats to survival when modern science and technology have made such powerful contributions to South African society? And what can be done to diminish the kind of vulnerability that leads to desperation? The Inquiry provides some answers to these questions in the structure and function of South African society.

The plight of the poor whites in the Twenties and Thirties had to be contended for in a hostile political atmosphere, in many respects as divisive and contentious as politics today. Indeed, the similarities between the reinforcing mechanisms of poverty fifty years ago, falling largely on the rural Afrikaner, and those of today, falling largely on the black community, are striking. But consider these basic differences of social and political condition: whites could own land in 1934, Africans cannot, by and large, in 1984; whites could move to the cities, with their families, at will, while today black South Africans are restricted by law from free movement or the opportunity to maintain an intact family life; and, not least of all, considering the successful rise of Afrikaner nationalism, whites had the right to express themselves politically, to vote. And, whites were not physically moved from place to place, in implementation of rigid segregation. These are painful facts, and they cannot be avoided in any serious effort to address human impoverishment in South Africa.

Let me make it clear that the Carnegie Corporation is not "picking on" South Africa, not selecting it for unique prejudicial scrutiny. We are supporting work in our own country and elsewhere that aims to illuminate and overcome human impoverishment. Through the Inquiry we are fundamentally trying to be helpful to all South Africans, just as our predecessors tried to be helpful to the poor whites a half-century ago. To do so, we must support honest and penetrating inquiry, letting it go wherever the evidence takes it. We must be true to our heritage, placing great value upon democratic institutions, universal education, equal opportunity, health for all the people, and compassion for human suffering. We recognize that these values are very hard to implement--anywhere. But they are no less applicable to South Africa than to any other nation.

South Africa is important for several reasons. One is its worldwide symbolism of prejudice and ethnocentrism, and emotionally-charged efforts at democratic reform and conflict resolution. South Africa carries to the Nth power a set of issues that resonate with similar issues elsewhere. South Africa is intrinsically interesting for additional reasons. It is a kind of twilight zone, full of complicated mixtures and paradoxes: part ancient and part modern; part democratic and part totalitarian; part black and part white; natural beauty and rich resources contrasting sharply with human degradation. Emotions of survival and desperation are at play on all sides of the multi-faceted conflict. But so too is a great deal of ingenuity, goodwill, grace under pressure, and dedication to humane values. It is just barely possible that the world will learn a lot from South Africa in the next few decades about ways of dealing with the most intense human predicaments.

The most drastic change in the long history of our species occurred only about two centuries ago with the onset of the industrial revolution: essentially the acceleration of technical advance and its application to human problems of adaptation. As it happened, this revolution occurred in the northern hemisphere--a fact which was to have profound repercussions over the ensuing two centuries, some of which are painfully visible in South Africa today.

In short, light-skinned people in Europe developed powerful tools before dark-skinned people elsewhere. These tools permitted an explosive increase in the production of worldly goods during the past two centuries. For the first time in our long and arduous history as a species, we could achieve considerable control over our environment, far-reaching protection against old vulnerabilities, and many opportunities that never existed before.

What a change a century can make! Indeed, human initiative has transformed the world in the twentieth century. An ordinary citizen of most technically advanced countries has opportunities and protections not available to kings in earlier centuries. In recent decades, largely in the second half of the twentieth century, science has been institutionalized on a vast scale for the first time, and the pace of advance in deep knowledge has accelerated precipitously--knowlege of the structure of matter and of life, of the nature of the universe and of the human environment, even knowledge of ourselves. These scientific advances provide an unprecedented basis for technological innovation, and the pace of such innovation is now the most rapid in all of history--e.g., in computers, telecommunications, biotechnology--and also weapons. The potential benefits of modern technology for human well-being are profound in every sphere: in food, water, health, communication, transportation, energy and human understanding in all its variegated splendor. This could mean the virtual elimination of human impoverishment in the next several decades.

But technology can be used in many ways. It can increase human suffering as well as relieve it. So far, technical advances have been both for better and for worse. Everywhere, those who have technical skills and advanced technology are powerful. They can, if they wish, turn their power against fellow humans who are weak, vulnerable, powerless or perceived as menacing to them. The temptation to use power in this way has been almost irresistible. Such behavior could be readily observed almost anywhere in centuries past--and right now!

Please bear in mind that the power of modern technology evolved first in Europe among light-skinned people. From that time to the present moment, there has been a tendency for light-skinned people not only to become more technically advanced and affluent, but also to depreciate, exploit, and even subjugate their dark-skinned brethren. This in my view is one of the most serious problems in the modern world, a root cause of human impoverishment, and a dilemma that has reached crisis proportions in South Africa.

The human species is rapidly reaching a phase of its evolution in which its prodigious capacities for technical skill and social organization can eliminate human impoverishment. But to do so, it will have to take account of its own nature--including ubiquitous tendencies toward prejudice, ethnocentrism, and violent conflict.

The world is now, as it has been for a long time, awash in a sea of ethnocentrism, prejudice and violent conflict. What is new is the destructive power of our weaponry: nuclear, enhanced conventional, chemical and biological. Moreover, the worldwide spread of technical capability, the miniaturization of weapons, and the upsurge of fanatical behavior are occuring in ways that can readily provide the stuff of very deadly conflicts in every nook and cranny of the earth. To be blunt, we have as a species a rapidly growing capacity to make life everywhere absolutely miserable and disastrous. As if that were not enough, two nations already have the capacity to totally destroy the species, to make human life extinct.

I do not think we have the luxury any longer to indulge our prejudices and ethnocentrisms. They are anachronisms of our ancient past. The worldwide historical record is full of hateful and destructive indulgences based on religious, racial, and other distinctions--holy wars of one sort or another. I know there are "tough-minded" people who believe that this is the human condition and we must make the most of it. But technology has passed them by, made their position unrealistic--if not today, then tomorrow.

If we cannot learn to accomodate each other respectfully--within nations and across nations--we will destroy each other at such a rate that humanity will soon have little to cherish--if indeed there is any humanity left on earth.

In such a world, South Africa has special significance. If the accomodation of diversity can occur there, it can occur anywhere. If entrenched hostilities can be reconciled there, the world will notice. If the structures of impoverishment can be changed there now as they were a half-century ago, this time to foster development for all people, it would indeed be cause for rejoicing everywhere. Let us fervently hope that the Second Carnegie Inquiry will provide a landmark on this path.

Senator PROXMIRE. I might incidentally say that there's a roll call on the floor of the Senate and that's why some of the Senators have left and they will return as soon as they can. We will stay as long as we can but we must not miss the roll call.

SULLIVAN PRINCIPLES HAVE BEEN HELPFUL

Dr. Hackney, you note on page 2 of your testimony that the Sullivan principles have helped to ameliorate working conditions for blacks employed in signatory firms, but it must be remembered that of the virtually 300 American companies which do business in South Africa only about one-third are Sullivan signatories and these employ only a small fraction of South African workers. I believe Sullivan signatories employ about 70,000 of South Africa's 22 million blacks.

Now, you endorse the provisions of S. 635 that does not make the Sullivan code mandatory. Do you believe it would strengthen or weaken the thrust of S. 635 by including provisions making the Sullivan code mandatory on United States corporations operating in South Africa?

Mr. HACKNEY. I, personally, think that would be a good step.

Senator PROXMIRE. Even though it would affect only a relatively tiny proportion of the blacks?

Mr. HACKNEY. Yes; I don't think that it would lead to a rapid social change immediately. In fact, one of the reasons I think other sorts of governmental action are necessary is that the process of change through the slow upgrading of black jobs in American companies is going to take longer than the South African black population will tolerate. So, other things are needed.

But I think making the Sullivan principles mandatory for American corporations doing business abroad would be a moral step indicating that those are principles of the ethical treatment of employees and the improvement of conditions to employees that really accord with our own standards of justice and I believe it would be appropriate from that point of view. It would also make some modest contribution to the improvement of conditions for blacks in South Africa.

Senator **Proxmire**. Senator Hecht.

Senator **Hecht**. Thank you very much. I'm very happy to have the distinguished people here today from top American universities. Of course, that is Eastern universities. I am not comparing them to Western universities, you understand.

You say you only speak for yourselves, the three of you, but actually when a president of a university or top leader of a university speaks out, it's printed in the school newspapers and college newspapers, so it does have some impact.

I want to remind you of a little bit of history. When the universities started rebelling in Cuba in the 1950's against Batista, we ended up with Castro. In Vietnam they went against Diem, the universities first, and we ended up with a war in Vietnam with over 50,000 deaths. The university people spoke against the Shah of Iran and how terrible it was and we ended up with Khomeini.

We're advocating economic sanctions. Governments fall on economic sanctions. Lyndon said there are two types of war, economic or shooting. Let's just say that history continues in this scenario and we end up in a war. What would you think about that—advocating economic sanctions and then having some of your students killed—have you thought about that, Mr. Hackney?

Mr. **Hackney**. Yes.

Senator **Hecht**. Say in case the Government would fall we would end up with a hostile Government and we might have to send American boys down there. Have you thought about that?

Mr. **Hackney**. I think all war is a terrible thing, sometimes necessary in the exercise of foreign policy. I don't think you're posing the choices very correctly though, because the change is going to come to South Africa. The question is under what conditions and what will be the result and what will be the attitude of that Government toward the United States. I think inducing, through modest measures, social change that will lead to a Government with which we can have a mutually good relationship is a far preferable course than to do nothing and to watch a revolution occur, and the Government will inevitably end up in the hands of hostile forces.

Senator **Hecht**. Well, when governments fall how can we know in advance what we're going to end up with?

Mr. **Hackney**. Senator, I think if nothing is done in South Africa we are likely to see a violent change and the result will be a country in the hands of people who will be hostile to the United States because we have sat back and watched it happen.

Senator **Hecht**. Mr. Bok, have you thought about the eventuality of a conflict if the Government would fall?

Mr. **Bok**. Yes; first of all, I would like to say, with all humility, that the fact that some people at universities may have taken some positions in the past I hope does not necessarily implicate us. We didn't necessarily take those positions and we are speaking in our private capacity on this question.

With respect to the point that you have posed, I think we find ourselves in the difficult position that anything that we do with respect to South Africa may contribute in some way to bringing about violence and therefore we must try to select that course of action, however difficult that may be, that is most likely to avoid violence.

In my view, if one looks at the kind of sanctions we are proposing here, it seems to me most unlikely that the denial of bank loans or the prohibition on the sale of krugerrands is going to bring about violence.

What seems to be much more likely is that the continued unwillingness of the South African Government to make significant changes in the regime is going to produce a pent-up frustration that will erupt in the form of violence. Therefore, by trying to do something which will add the moral pressure of this country to bring about those constructive changes is one that has the greatest possibility of avoiding violence and the least possibility of contributing to it.

Senator **Proxmire**. Senator Hecht, we have about 4 minutes before the end of the vote. We'd better run. The committee will stand in recess until Chairman Heinz returns.

[Recess.]

Senator **Heinz**. Ladies and gentlemen, the hearing will reconvene.

I want to thank Senator Proxmire for continuing in my absence. Immediately before the recess Senator Hecht was engaged in questioning. He will be back in about 4 or 5 minutes. In order to make the most effective use of time what I'd like to do, with the concurrence of Senator Riegle, is to ask Senator Riegle if he would mind proceeding with his questions but on the understanding that Senator Hecht might interrupt him and resume his questioning and then we would return to Senator Riegle. Would that be amenable?

Senator **Riegle**. That would be fine.

Senator **Heinz**. Would you then proceed?

Senator **Riegle**. First of all, I appreciate the appearance of all four witnesses today and I especially appreciate your statement and testimony, President Bok, because I think it frames the issue just the way it needs to be framed. I also appreciate hearing the views Dr. Hackney, as well as those expressed by other members of the panel.

I am a cosponsor of this legislation, as you may know, and feel very strongly that we've got to take a step. I'm troubled, though, by the contradiction with respect to the enormous emphasis our Government is giving to Nicaragua and Central America. It is an important place, but there is a tremendous preoccupation with that part of the world, and vast sums of money are being spent on all kinds of military initiatives, some known and some unknown. It seems to me, that in the case of South Africa, we face a question of different form but of equal weight and we are not doing much about it.

LACK OF URGENCY

The President doesn't seem to have much of a sense of urgency about it. I don't sense within the State Department and the administrative machinery right down through the Ambassador in that country much of a keen sense of urgency about trying to move things at a more rapid rate. And I just think it's wrong and I think we are very late as a nation in responding.

It is difficult to determine what is precisely the best legislative vehicle or vehicles to use here, but it seems to me our choice is to do nothing or to do very little, and I don't think that is an acceptable alternative. I think that lives are being taken and otherwise ruined by the policies there and I think we have a real obligation to find some more effective way to try to change things for the better. This package of legislative initiatives comes as close as I see us able to come at this particular time. I believe it is a proposal which tries to balance a lot of different things in a sensible way.

But I feel that the time has come for the Congress to provide some leadership that's missing from our Government. Congress must help focus the administration's attention on this issue, to see if we can't start to substantially have a bearing on developments in South Africa, and to try to move them in a more constructive way.

Even this morning's news concerning violations of pledges and understandings with respect to the use of South African military forces in areas where they ought not to be, I think shows that it's very difficult to deal even in an open and direct way with that Government, particularly if it fails to honor the limited understandings and agreements which they are willing to be part of.

So, it seems to me that the time has come for us to squeeze and to squeeze hard, and not just in a few isolated spots around the globe where the geopolitics may be a little different, but especially in South Africa, where one of the worst outrages on the face of the Earth that we know about is taking place—it's taking place literally this hour, last hour, next hour, tomorrow, and next week—and lives and opportunities are being just twisted hopelessly out of shape while we, in a sense, conduct business as usual with respect to the overall thrust of American Government policy. Something more has to be done.

I think S. 635 is the right approach for us to take at this time and I hope that we will be able to pass it. I just want to end by commending the chairman for conducting these hearings, for allowing this kind of a debate to go forward, and for building a hearing record and a record of testimony from which the Senate as a whole can draw its judgments as to the decisions that it wants to make.

That's all I have to say, Mr. Chairman, at this particular point. I'd like, at some point, to get on to our other witnesses because I'm concerned that we're going to be interrupted by subsequent votes. I particularly want to hear from Ambassador McHenry.

Senator HEINZ. Very well. I know Senator Hecht will be returning in a moment or two. I do have one other question I would like to pose to our panel.

Mr. Schotland, you spoke very articulately. I guess I can reserve my question and I will submit it to you in writing.

[Response to written question of Senator Heinz follows:]

QUESTION FOR MR. SCHOTLAND
SENATOR HEINZ
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1. You have endorsed the Sullivan Principles. At the same time, you have also endorsed no new investment in South Africa. It has been argued that S. 635, with its provision prohibiting new investment, would lead companies operating in South Africa to cut costs to the bone in order to generate new capital. How would this effect efforts to comply with the Sullivan Principles? In your opinion, is there an inherent contradiction between no new investment and the social welfare aspects of the Sullivan Principles, or, indeed, between no new investment and the ability of U.S. companies to remain in South Africa and stay competitive as their plant and equipment become obsolete?

ANSWER:

The Rockefeller Commission report ("Time Running Out," 1981) also endorsed both the Sullivan Principles and no new investment. Indeed, their definition of new investment is more restrictive than the pussy-cat provision of S. 635.

I believe these positions not only are consistent, but are the most responsible, effective and moral positions. Firms already in South Africa should do all they reasonably can to improve the situation there. No firms should make significant new investment there--as S. 635 allows--lest South Africans infer that we are not serious. This is not a situation in which boycott is constructive, nor one in which we can expand business as we might usually.

Senator HEINZ. Senator Hecht, we have been carefully guarding your every right and prerogative so that you may continue.

Senator HECHT. I thank the distinguished chairman.

Mr. Bok, I kept your thoughts in mind as I was going over to vote. You said, basically, these are not particulary harsh sanctions, just sanctions, but you understand the business community. Business does not go where it's not a good economic climate. Business does not like uncertainty. So, only minimal sanctions create economic unrest. Do you agree with that?

Mr. BOK. Do I agree with the statement that even minimal sanctions cause economic unrest?

Senator HECHT. They send out a signal to the business community and why would business go basically where they are not wanted and do not know what's going to happen tomorrow? They want a good business climate.

Mr. BOK. Well, I think from that standpoint, anything produced by this bill is dwarfed by the enormous uncertainties about the future of South Africa that are inherent in the political situation in that country itself. Certainly, the events of the last 6 months create all kinds of uncertainties for American business and I think they dwarf any uncertainties that are imposed by the limited sanctions in this legislation.

CHANGES ARE OCCURRING

Senator HECHT. But changes are occurring in South Africa. When I was down there in December I met with a distinguished rabbi who's been there 37 years. He said:

> I've seen more changes in the last 5 years than I ever thought my grandchildren would see.

He said,

> If you want to help the black people of South Africa, send down more American investment; don't limit it; because only when Americans started coming down they started getting equal pay for equal work and equal job opportunities.

So, the people of South Africa, not all of them, share your view.

Mr. BOK. Well, there certainly have been changes in the last 5 years in South Africa and some of them I think have moved in the right direction. But I think changes like removing the ban on mixed marriage or integration in sport—some of those were brought about because of pressure. In fact, the white South Africans with whom I talked are quite unanimous in indicating that without some pressure even those changes wouldn't have occurred.

There are other things that are changing in South Africa that we also have to take into consideration I believe in making an overall appraisal of what is going on there.

We have more pass law violations in the last few years by a factor of two than we had before for blacks who are not obeying the influx control laws that keep them from residing with their families. We have more people dying of violence. We have more people in South Africa arrested or banned because of their political views than we have had in past years. We have a substantial increase in the proportion of families that live below the poverty line. We have many more people forcefully displaced from their homes and sent to the homelands than we did 5 years ago.

So I think the picture is mixed and I don't see fundamental steps taken by the Government yet that have really made large dents on the basic system of apartheid that takes away political power from blacks and reduces them to a position far inferior to that of the minority of whites.

Senator HECHT. Well, the facts are not exactly that way because the blacks still have the best standard of living in South Africa compared to any other nation in Africa. I also want to state to all of you, in no way do I support the apartheid policy absolutely, but I wonder why are we honing in—what about Afghanistan and as somebody else said, Nicaragua? Why are all these sanctions going against South Africa right now?

Mr. BOK. Well, to say that we can't do anything in South Africa without examining the nature of our policy in all other countries, I suppose inevitably forces us to do nothing because we will probably never achieve perfect consistency in our behavior toward all countries.

I do think the situation in South Africa is a particularly flagrant case in which people are being exploited in ways directly contrary to our national ideals, and we have certainly not hesitated in a number of other such instances to use economic sanctions and other means to express the policy interests of this country.

Senator HECHT. Name a few.

Mr. BOK. Well, we have just exerted an economic boycott against Nicaragua. That's far more sweeping than anything——

Senator HECHT. Nicaragua's leader though, is a man who is sitting in Russia with the Communist leaders, a devout Communist. Give me another country.

Mr. BOK. Well, we have imposed economic sanctions with respect to Russia in the past.

Senator HECHT. We're still trading with Russia.

Mr. BOK. Well, I can't—if you're asking me to defend the consistency of American foreign policy in its treatment of all other countries, I must humbly disqualify myself. That's not why I was asked to come and I'm really not qualified to do that. But I don't feel the fact that we may not be taking measures in other countries that you think are wise ought to prevent us from adopting policies with respect to South Africa that we feel are warranted.

Senator HECHT. Let Mr. Schotland respond.

Mr. SCHOTLAND. Thank you, Senator. I think perhaps at least as I see it the best answer to what you're driving at comes from putting together something you said and something that Senator Riegle said. You said not everybody in South Africa seems to have the same views and Senator Riegle emphasized how important it is that we make clear where America is vis-a-vis the direction that's going to be occurring in South Africa. I think it's important that we take carefully tailored steps to strengthen the forces for peaceful change in South Africa.

Certainly South Africa is an enormously important country and I'm not sure it isn't much more important over the long haul than let's say Nicaragua. I think we have to make very clear that we don't believe in business as usual with respect to South Africa. We've also got to be very careful, as Secretary Shultz said, about not throwing matches on the fire. And that's why I think carefully tailored steps like krugerrands, like military and police equipment, limitations like new bank loans, like strengthening the educational efforts that many universities are conducting to bring black South Africans here—I think these kind of steps hopefully will make clear to whoever is going to be in charge in South Africa what it is that America stands for.

Senator **HECHT**. Can you see the other side of the coin of an economic collapse though?

Mr. **SCHOTLAND**. I don't know what will happen down there whatever we do. I do know that we ought to make clear what it is we hope will happen.

Mr. **D'AGOSTINO**. Let me just make a quick comment on the Sullivan principles. It was mentioned before. The Sullivan principles have influence far beyond the numbers of American companies that signed them. In fact, the European Common Market has passed a code of conduct for companies doing business in South Africa modeled partially after the Sullivan principles. So they have tremendous spillover effect both in the indigenous country and in the way other governments have treated South African investment.

Senator **HECHT**. Thank you, Mr. Chairman.

Senator **RIEGLE**. Mr. Chairman, when I questioned Senator Hecht earlier I did not use all my time. I wonder if I might take 1 minute to pose a question to Senator Hecht on something that he just said.

Senator **HEINZ**. I don't have any problem with that, if Senator Sarbanes doesn't. He's next.

Senator **RIEGLE**. Paul, would you be willing to yield for a moment?

Senator **SARBANES**. Sure. I'm looking forward to the question.

Senator **RIEGLE**. I appreciate that. I want to say to my colleague from Nevada that I was struck by his question when he referred to the standard of living of black people—the reference I think was to the standard of living of black citizens of South Africa as being higher than that of other citizens in other areas of Africa outside of South Africa.

Senator **HECHT**. That is correct.

Senator **RIEGLE**. I'm wondering how we evaluate standard of living without taking into specific account civil rights and human rights within the society. It seems to me that standard of living is not just dollars per hour, or wages per week, or what kind of shelter you're living in, but it goes much deeper than that. The reason our country exists is that we find very precious the issues of freedom and how a person stands within society.

CONDITIONS ARE TERRIBLE FOR BLACKS IN SOUTH AFRICA

I was struck by the Senator's comment, because my immediate reaction was that the standard of living in the human rights sense and the civil rights sense for black people in South Africa is really quite terrible. I was having a hard time reaching a value judgment on some other definition of standard of living which leads one to conclude that the blacks in South Africa are better off than other blacks elsewhere in Africa. That's what I'm really wondering about.

Senator **Hecht**. Thank you for asking the question. You made my day. Let's talk about Ethiopia. Let's talk about Angola with their 30,000 Russian or Cuban troops down there. Let's talk about Mozambique with the full Communist form of government. Let's talk about Zimbabwe which is hanging on by its fingertips only because of South Africa where one person in Zimbabwe will probably feed 25 mouths because we have American companies in Zimbabwe that are still staying there and without them the country economically would go the other way.

I know of no country where the blacks are better off in Africa than in South Africa.

Senator **Heinz**. Senator Sarbanes.

Senator **Sarbanes**. It's an absolute misnomer to refer to South African blacks as citizens. One of the essential wrongs perpetrated by grand apartheid is that it denies citizenship to the blacks of South Africa. They are not citizens. That's one of the things that's so abhorrent about the apartheid system.

So I really take issue with those of my colleagues, or others, who call South African blacks South African citizens. One of the great indignities of apartheid is it denies to them citizenship status.

Second, I gather while I was out that the Carnegie inquiry study by David Hamberg was put in the record, is that correct?

Mr. **Bok**. That's correct, Senator.

Senator **Sarbanes**. In view of the discussion that's just been held I would simply like to quote from that very quickly.

The inquiry reports that there has been a great increase in poverty in South Africa over the past 20 years, largely as a result of the accelerated implementation of grand apartheid wherein blacks are deprived of their South African citizenship and deported to the reserves set aside for their particular ethnic affiliation. These reserves or homelands have become dumping grounds for economically redundant people. One paper referred to these people as the discarded and dispatched.

NUMBER OF DESTITUTE

According to the inquiry report, the number of people made destitute by landlessness and unemployment has risen from 250,000 in 1960 to 1,430,000 in 1980. The number living below the poverty line but having some income has reportedly increased from 4.9 to 8.9 million, about one-half of the population of blacks in South Africa. Now, 11 million blacks comprising 37 percent of South Africa's population are being crowded into the 10 officially autonomous homelands that make up only 13 percent of South Africa's land area. There is insufficient arable land or infrastructure to yield an adequate income for the families living there. Traditional subsistence agriculture is collapsing with the overcrowding.

The inquiry study of the migrant labor system reveals its devastating impact on families. One-quarter of black women in South Africa are separated from their husbands because of influx control regulations and the pass laws that regulate the movements of workers. Many children are growing up in homeland areas barely knowing their migrant laborer fathers who visit home only once a year. Adverse child development and high crime rates are part of this picture.

If we are going to talk a bit about the morality or immorality of disinvestment, we ought to talk at greater length it seems to me about the morality or the immorality of the apartheid system.

Mr. D'Agostino, I'd like to go back to your statement on page 6:

> S. 635 would make South African internal policies a question of debate in the United States Congress. This is a monumental insult to an ally or to any country whether allied or not.

Am I to draw from that that the internal policies of any other country are not a legitimate subject for debate in the U.S. Congress?

Mr. D'AGOSTINO. No; I think I answered that earlier. The import of all of what I've said is the problem is not debating the internal policies and saying that they are wrong. This bill's problem is that it implicitly gives the U.S. Congress supervisory authority over the internal policy of South Africa. Every time the President says that things are getting a little better and they've done something right, it goes for debate in the U.S. Congress.

Senator SARBANES. What about the emigration of Jews from Communist countries? Is that a legitimate subject of debate in the U.S. Congress?

Mr. D'AGOSTINO. I think apartheid is a legitimate subject of debate in the U.S. Congress, too. That's not what I said. I said this bill makes it seem that the U.S. Congress is having continuing supervisory authority over the internal affairs of the South African Government and we're inviting them to dig in their heels.

Senator SARBANES. That's not what your statement says. That's why I read your statement before I put the question.

Mr. D'AGOSTINO. I think I've addressed it in several places. I'm sorry it wasn't clear in just that one place but that was the import of what I wanted to say.

Senator SARBANES. Do you think the immorality of the internal policies of some other government can be sufficiently abhorrent that it would require us to take measures to distance ourselves from that government—to seek to bring about a change in it; or if we couldn't achieve that, to break the relationship?

Mr. D'AGOSTINO. I think for the first part of your question, the answer is yes. In terms of breaking the relationship, I think then it goes to the lesser of evils. For instance, we allied ourselves to the Soviet Union during World War II to fight a more immediate evil. And the answer is that sometimes overall U.S. policy and interests must prevail over something we don't like and that's a question of judgment. The answer is, we should distance ourselves from apartheid. I haven't suggested anything different in my paper. I suggest a different way of approaching it perhaps, and I'm more supportive of the Reagan administration's constructive engagement.

Senator SARBANES. Let me put to the panel a couple of questions which I think could be answered very quickly.

First of all, do you agree that American policy toward South Africa is being perceived as indulging the apartheid regime?

Mr. HACKNEY. I do, yes.

Mr. BOK. That's my impression.

Mr. SCHOTLAND. I would like to see this bill amended to make it more clear that that is not the situation.

Senator SARBANES. But currently do you think there's a perception that our policy toward South Africa—current policy toward South Africa—is indulging the apartheid regime?

Mr. SCHOTLAND. I think whether there is or isn't, there's too much possibility of such perception.

Mr. D'AGOSTINO. Yes; I think there is that perception.

Senator SARBANES. Now, if there is such a perception, would you see that as being harmful to American interests?

Mr. SCHOTLAND. Clearly.

Mr. BOK. I do.

Mr. HACKNEY. Yes.

Mr. D'AGOSTINO. Long-term interests.

Senator SARBANES. Now, we're agreed on that. There is a perception of indulging the regime and such perception is harmful to American interests.

Now, what do we do to change the perception? Mr. D'Agostino, I take you in say effect, well, don't do anything, the policy is sort of all right as it is; just leave it. Mr. Hackney and Mr. Bok say S. 635 would send an important message in changing that perception and making it clearer where we are. I'm not quite sure, but I think Mr. Schotland is saying he wants to make S. 635 even stronger: it's a pussycat and he wants to make it into if not a lion at least a leopard. Is that correct; or am I missing something? I'm not quite sure whether you're coming at this bill saying that it ought to be tougher and then you would be for it, or whether you're coming at it and saying, well, it's really not so tough and therefore I'm not really for the bill.

COULD GIVE WRONG IMPRESSION

Mr. SCHOTLAND. I think you're right. I think there's damage if it is perceived by those who are in charge in South Africa as being showboating at home and not really meaning business about what we do in South Africa. I think that would do more harm than good.

I think the krugerrand provision, bank loans provisions are real provisions and would be constructive. I think there are other provisions such as selective divestment, such as military policy, nuclear-related sales, such as strengthening our participation in education which have got to come along. I think we have a real danger between their seeing us as just showboating and our doing something that helps the people down there who want to take a forward move.

Senator SARBANES. Which of the provisions of S. 635 are, in your view, showboating?

Mr. SCHOTLAND. As President Bok and I indicated earlier, we're troubled about the bill's unclarity—I now understand, thanks to Senator Proxmire—as to whether all American bank loans are barred or only American bank loans as to the South African Government.

Senator SARBANES. Well, I got my training at President Bok's institution, not like Senator Proxmire in the business school but in the law school, and I thought Senator Proxmire as a graduate of the business school did a pretty good job in asking two fairly good lawyers at the witness table.

Mr. BOK. He does have a graduate of the Harvard Law School on his staff. [Laughter.]

Mr. D'AGOSTINO. Senator, I just want to correct the record. I have not proposed doing nothing.

Senator SARBANES. Well, you propose the Sullivan principles.

Mr. D'AGOSTINO. Sullivan principles among other things. I also propose that a gesture such as a ban on direct loans to the Government would make it plain that we're serious, but anything that would reduce American involvement in the South African economy I believe would be counterproductive.

Senator SARBANES. Well, we may reach the point where a judgment has to be made whether we are involving ourselves in an immoral system whose immorality is so sweeping that we simply can't continue to do that in good conscience, or whether we continue to be involved in an effort to bring about constructive change. I think S. 635 is clearly in the latter category and I am struck in my discussions with people from South Africa, including South African blacks, by their continued willingness to try to go down the path of peaceful change even when the South African Government is thwarting and stymying every reasonable approach along that line. Mandela is in jail. The UPF people now have been arrested and charged with treason. Where is a South African black going to turn, under the current arrangement to bring about peaceful change in his country—where he is the overwhelming majority?

Senator HEINZ. The Senator's time expired some time ago. Are there any further questions for this panel? We have Ambassador McHenry. We have another panel after Ambassador McHenry.

Senator Sasser, I see you have joined us. Do you have any questions or would you care to submit them in writing to expedite our hearing?

Senator SASSER. Well, I'm going to delay the hearing, with the Chairman's permission, and ask a couple of questions.

Senator HEINZ. By all means. The Senator has every right to proceed. You will not delay the hearing. It will simply encourage the fullsome involvement of the entire committee in the question of public policy before us.

Senator SASSER. Thank you, Mr. Chairman.

Mr. Schotland, you pointed out that this bill does not touch certain matters such as the sale of $28 million in military equipment to South Africa during 1981 through 1983, does not touch the question of seven nuclear-related exports to South Africa in 1981 and 1982, the licensing of U.S. firms to service the nuclear reactor, the licensing for sale of 2,500 electric cattle prods for crowd control.

Would you support legislation that imposed comprehensive bans on such sales and transfers?

Mr. SCHOTLAND. Yes, sir.

Senator SASSER. You think such measures should be added?

Mr. SCHOTLAND. Yes, sir.

Senator SASSER. You criticize the legislation for not being serious enough. What is your reaction to the idea that this may be the first step, a shot across the bow so to speak, a warning, a signal that if change does not go forward with greater speed that Congress will take even stronger action?

BILL WOULD BE A STRONG SIGNAL

Mr. SCHOTLAND. I think that would be an excellent step if that's the way we represent the bill. If we represent the bill as a strong signal which is making clear that we will pay any price and so forth, I think we are letting ourselves in for it being said that we're showboating and hyping. If we say this is a shot across the bow, it's a step, we will take further steps, we've got to get constructive peaceful change and we mean it, I think that would be a very fine move.

We ought to admit and own up to what we're doing when we're saying we're trying to be moral.

Senator SASSER. President Bok, you're a lawyer and in fact you quote Justice Harlan's dissent in *Plessy* v. *Ferguson* in your testimony if I'm not mistaken, and you certainly are familiar with the role the courts played along with the Federal Government in the civil rights movement in this country.

Is it not the case that the Federal courts, particularly the fifth circuit courts, played an important role as an outside force in the South pressuring the States here in our country, some of the Southern States, to change their practices with respect to racial segregation?

Mr. BOK. That is my understanding, sir.

Senator SASSER. And can you draw any analogy between what occurred with the outside pressures of the fifth circuit court and the importance of outside pressure on South Africa? In other words, do you think that such outside pressure as is contemplated in S. 635 would strengthen the forces for moderation and change inside South Africa, or would they be counterproductive as I think Mr. Crocker claims?

Mr. BOK. No; I certainly do not agree with that. I come here in support of the kind of sanctions that are included in this legislation. I would, however, like to underscore a point that I made in my opening statement which is very much in line with your characterization of the bill and very much in line with Mr. Schotland's testimony.

I support this bill as far as it goes. I think there are other intermediate sanctions, however, some of which Mr. Schotland has alluded to, some of which I alluded to in my own testimony, which ought to be pursued vigorously which would make our effort even more effective.

Whether the kind of pressure that would result is on all fours an analogy with fifth circuit lies beyond my ability to say, but certainly I believe that a combination of constructive action by American firms and pressure from the United States is the most likely means through which we can maximize whatever chances for constructive change and, therefore, I think we need to add that element of pressure through sanctions similar to those in this bill, plus the additional ones that Mr. Schotland and I have identified.

Senator SASSER. And you would see this as strengthening the forces of moderation and a move in the direction of change in a moderate fashion?

Mr. BOK. Strengthen whatever chances exist of producing constructive change rapidly enough to avoid what seems to me to be the growing danger of real and tragic violence.

Senator SASSER. Finally, Mr. Chairman, one last question for Mr. D'Agostino.

I note, Mr. D'Agostino, that you criticize S. 635 for involving Congress in the debate on the internal affairs of South Africa and you say in your testimony, and I quote:

> S. 635 would make South African internal policies a question of debate in the United States Congress. This is a monumental insult to an ally or to any country whether allied or not.

Now, I assume you object, or would you object to Congress taking an interest in the internal affairs of Nicaragua, for example? That seems to have preoccupied us, some think unduly now for a great number of months. Don't you believe the issue of human rights is a legitimate consideration for the U.S. Congress?

Mr. D'AGOSTINO. I'd like to start with again apologizing for being unclear in that section, particularly since Senator Sarbanes also pointed that out to me. What I was objecting to was in conjunction with this bill. The debate of the internal affairs of South Africa is proper for the Congress. There's no question. It's a moral problem and it should be stated.

What I meant is that the bill makes, in a sense, the U.S. Congress a continuing supervisory authority over the advances that South Africa may or may not be making. If it weren't for the bill's provision of having the President go down to Congress and prove they've been good boys today and they have done a little better and then having another debate. It's the continuing debate and implicit supervisory type of debate that is the problem, not the debate itself.

I think the debate sends a message to South Africa that's very important to the ruling class in South Africa. I'm sorry I was unclear on that.

DISTINCTION OF INVOLVEMENT

Senator SASSER. Well, can you make a distinction between our Government's effort as you say to supervise the internal affairs of South Africa and our obvious efforts to supervise the internal affairs of the Government of Nicaragua?

Mr. D'AGOSTINO. Yes; I think the end of our policy in Nicaragua is to bring down the Sandanista regime. It's not the end of our policy in South Africa. The South African Government is friendly to the United States and is no threat to the United States in its present form. The Nicaraguan regime is. If the other Central American countries fall, I wonder how we're going to prevent involvement in the future problems of Mexico. We have enough trouble defending our borders now.

Senator SASSER. The question is not whether or not we involve ourselves in the internal affairs of another government. The question is whether or not the government is friendly to us or whether or not it poses perhaps a danger to the United States?

Mr. D'AGOSTINO. No; the question is how far we involve ourselves depends on that last. The answer is that whenever we involve ourselves in the internal affairs of any country we must do it very, very carefully. It happens all the time. I think Senator Fulbright overstated when he said "don't involve yourself unless it threatens your country directly." We do influence the internal affairs of other countries.

The question is what is the end which we wish to achieve? Is the end of using our influence to overturn a regime? Is the end of what we're trying to achieve the upholding of certain human rights principles? It's the end of our involvement that's important. How to achieve that end is the issue.

What I disagree with is not the end that this bill states. The first two paragraphs of the bill are perfect. A colorblind legal society is what it calls for. I certainly agree with that. The question is, will it achieve the end which we want to achieve?

Senator SASSER. Thank you. Mr. Chairman.

Senator HEINZ. Very well.

Senator PROXMIRE. Mr. Chairman, I have additional questions I'd like to ask for the record of Dr. Hackney and Mr. D'Agostino and I have one other point.

Senator Kennedy has asked me to put into the record his exchange of correspondence on S. 635 with Derek Bok, president of Harvard; Michael Sovern, president of Columbia University; and David Hamburg, president of the Carnegie Corp.; and also a letter of endorsement from the UAW.

Just one other item. I want to put into the record a statement of support for S. 635 from Donald Kennedy, the president of Stanford University.

Senator HEINZ. Without objection, they will all be included in the record.

[The following information was subsequently submitted for the record:]

EDWARD M. KENNEDY
MASSACHUSETTS

United States Senate
WASHINGTON, D.C. 20510

March 28, 1985

Derek Bok
President
Harvard University
Cambridge, Massachusetts

Dear Derek:

As you know, on March 7, 1985, Senator Weicker and I introduced The Anti-Apartheid Act of 1985 (S. 635). I am enclosing a copy of that bill for your information.

The purpose of this letter is to ask for your views on this proposed legislation. I know that you have given a good deal of thought to the situation in South Africa and about ways that Americans can work most effecitvely to assist in the effort to eliminate apartheid. I would be grateful for your thoughts on the approach that we have proposed in this legislation.

Thanks for your willingness to help out on this.

Sincerely,

Edward M. Kennedy

April 2, 1985

Dear Senator Kennedy:

Thank you for your letter of March 28, 1985. In response to your request, I am pleased to state my views concerning S. 635, the Anti-Apartheid Act of 1985.

Let me make clear at the outset that the following opinions are my own and do not represent the official position of Harvard University. Like other universities, Harvard does not take institutional positions on any federal legislation that does not directly affect higher education. On the other hand, my duties over a long period have led me to pay close attention to events in South Africa and to develop personal views on the affairs of that country.

During the past twelve years, Harvard has sought to play a positive role as an investor in U. S. companies doing a small amount of business in South Africa.* We have taken great pains to vote in an informed, responsible manner on shareholder resolutions. In addition, we have gone beyond voting by conducting an active dialogue to persuade such firms to improve working conditions for nonwhite employees and to express opposition to influx control and other repressive apartheid laws. The University has also funded educational programs for nonwhite South Africans. Finally, I have served since its inception as Chairman of the National Council of the South African Educational Program, under which more than 225 nonwhite South Africans are currently studying in American universities.

Apartheid is at war with human freedom and dignity. It is a system of government that separates people on the basis of color, strips members of one race of their basic human rights, robs them of their citizenship, denies them economic opportunity, and imposes these indignities through criminal law and police action. Because of its flagrant injustices, apartheid is universally condemned in the United States.

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*Harvard will not invest in companies doing a majority of their business in South Africa.

Recent events should lead us to review our national policy toward South Africa. In the past year, we have heard statements by the South African government aimed at persuading the world that it is pursuing change in its relations with the country's nonwhite majority. And yet, the concrete steps taken thus far toward reform have been very meager. Jailings and killings by police dramatize the continuing repression practiced by the Afrikaner regime. At the same time, the frustration and militance among blacks are mounting fast enough to suggest that the time for peaceful solutions is running out.

Against this backdrop, the current United States policy of "constructive engagement" with South Africa seems increasingly inadequate. Despite our government's stated opposition to apartheid, the responses of the Afrikaner regime fall far short of what the urgency of the situation demands. Worse yet, our current policies are easily mistaken for tacit acquiescence in a status quo that offends our most precious ideals and threatens to deteriorate in growing violence and instability.

Observing events in South Africa, many shareholders and other individuals and organizations in this country have been trying to show their concern by pressing American corporations doing business in that country to respond more vigorously to apartheid. Some have urged these companies to improve wages and conditions of employment for nonwhite workers. Others have gone further and asked such firms to express opposition publicly to influx control laws and other repressive legislation. Still others have sought to persuade companies to leave South Africa entirely.

In view of the severe injustices of apartheid and the risk of growing violence and unrest, I believe that efforts by shareholders and other interested private individuals will not suffice. Instead, circumstances require a more powerful expression of our national concern. I therefore support legislative sanctions. At the same time, I believe that we should avoid, at least for the present, sanctions that threaten to inflict significant hardships on innocent third parties, especially nonwhites. It is simply too difficult to know whether more drastic measures would bring benefits that compensate for the burdens they impose or whether they would prove ineffective or, worse yet, provoke a backlash that will further reduce the prospects for meaningful reform.

In my opinion, S. 635 satisfies these criteria. The sanctions it contains seem real enough to communicate the sincerity of our convictions to South Africa. The effect of the bill will not be to throw nonwhites out of work or impede the progress of black trade unions. The penalties fall directly on the government and affect those responsible for apartheid on whom we most wish to impress our concern. Finally, S. 635 would curb added investments that could substantially increase our financial stake in South Africa and thus augment the risk of compromising our independence as a nation to act on principle rather than economic self-interest.

I should add that much of S. 635 parallels the policies Harvard has developed as a shareholder in firms doing business in South Africa. As does your bill, we have consistently opposed bank loans to the South African government or its subsidiary organizations. We have voted against new investments by companies in which we hold stock. And we are currently soliciting information from corporations in our portfolio to ascertain the existence of sales of critical materials to the South African government.

Proponents of our present national policy toward South Africa argue that we can only effect change in that country if we remain fully and constructively engaged in its economic and political affairs. They assert that we cannot hope to achieve an influence over the policy choices of the Afrikaner regime if we take steps to distance ourselves from South Africa. I believe that we need a different kind of engagement, since our current policy of quiet diplomacy has failed to achieve any significant reform. In recent months, scores of blacks have been killed, many more have been detained, and millions are denationalized and restricted to "homelands." In the face of these brutal facts, our engagement with South Africa should be intensified to leave no doubt about our condemnation of apartheid and our determination not to do business as usual with the Afrikaner regime.

Almost ninety years ago, Justice John Marshall Harlan wrote a prophetic dissent to the Supreme Court decision in Plessy v. Ferguson upholding state-imposed segregation in the United States. Harlan condemned mandated segregation as "inconsistent not only with that equality of rights which pertains to citizenship, but with the personal liberty enjoyed by everyone in the United States....The destinies of the races in this country are indissolubly linked together, and the common government of all shall not permit the seeds of race hate to be placed under the sanction of law." These sentiments reflect ideals central to our national creed. They should inspire our government to communicate our opposition to apartheid more convincingly to the South African people, especially now that the situation in that country seems to be moving toward greater violence and repression. The legislation you propose would help to achieve this objective. I am pleased to endorse it.

Sincerely,

Derek Bok

Derek Bok

The Honorable Edward M. Kennedy
113 Senate Russell Office Building
Washington, D. C. 20510

HARVARD UNIVERSITY

OFFICE OF THE PRESIDENT

MASSACHUSETTS HALL
CAMBRIDGE, MASSACHUSETTS 02138

Supplement to May 24 Testimony on S.635

Derek Bok

Question: You have endorsed the Sullivan Principles. At the same time, you have also endorsed no new investment in South Africa. It has been argued that S.635, with its provision prohibiting new investment, would lead companies operating in South Africa to cut costs to the bone in order to generate new capital. How would this affect efforts to comply with the Sullivan Principles? In your opinion, is there an inherent contradiction between no new investment and the social welfare aspects of the Sullivan Principles, or, indeed, between no new investment and the ability of U.S. companies to remain in South Africa and stay competitive as their plant and equipment become obsolete?

Response: Let me begin by making clear that I am not sufficiently acquainted with the financing of American companies in South Africa to provide you with a definitive answer. Nevertheless, I am skeptical about the existence of an intrinsic conflict or contradiction between S.635, particularly its call for an end to new investment in South Africa, and the goals and demonstrated benefits of the Sullivan Principles.

While the legislation would prohibit new investment, it would allow the continued reinvestment of earnings from existing business operations in South Africa. Such reinvestment has for some time been a large majority of the more than $2 billion in direct investment in South Africa by United States companies. For example, The Economist magazine in a lengthy discussion of the sanctions debate estimated that new capital inflows are less than $100 million of the total direct investment, or about four percent. This suggests that the ban on new investment would not force companies to cut costs on existing operations so drastically that their ability to comply with the Sullivan Principles would be diminished. If further assurances seem important, one could provide in the legislation an exemption for investing funds specifically designed to implement the Sullivan Principles or to provide better housing, medical care, or job training for nonwhites.

I have seen no evidence that compliance with the Principles imposes burdensome costs on the signatory companies. Of the six Principles, only three are directed primarily at program support and development. (They call for job training, increasing the number of nonwhites in management and supervisory roles, and improving the quality of employees' lives outside the workplace.) While such efforts can be costly if they emphasize the funding of new programs or institutions, the less costly alternative of financial and other support for existing activities is also an important element of compliance. The amount of money spent by United States companies on such programs in 1983 has been estimated at $13 million--not a great deal of money for some 280 companies. The other three Principles mandate equitable treatment of employees of all races and involve little cost, I suspect.

As for the ability of United States companies to remain competitive in South Africa, this concern should also be alleviated by recalling the relatively small proportion of new capital inflows in the existing direct investment.

I feel it is important to point out that while the banning of new investments need not, in my view, interfere substantially with the Sullivan code compliance or the competitive ability of United States companies, this does not mean that sanctions would be ineffective in other respects. The ban on new loans to banks would affect a source of approximately $3 billion for South Africa. The prohibition on importing kruggerands would cost South Africa $600 million per year. In short, S.635 is legislation which can achieve the important purpose of exercising economic leverage against apartheid without undermining the constructive effects of the Sullivan code.

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URBAN AFFAIRS
WASHINGTON, DC 20510

FEDERAL RELATIONS
JUN 5 1985

May 31, 1985

JUN 03 1985
#8 Dmjm

Dr. Sheldon Hackney
President
University of Pennsylvania
100 College Hall
Philadelphia, PA 19104

Dear Dr. Hackney:

On behalf of Senator Heinz I want to thank you for your excellent testimony before the Subcommittee on May 24, 1985, on the S. 635, the Anti-Apartheid Act of 1985. It was most helpful in building a strong Committee record on this issue.

There were a few additional questions which Senator Heinz and Senator Proxmire would like to request that you answer for the record. I have attached them to this letter and would appreciate your answering them.

Again, I want to thank you for your cooperation with the Committee in this hearing. It is only through the cooperation and assistance of people with your expertise and public service commitment that the Congress can fashion intelligent legislation.

Please send the answers directly to Ed Malan, Editor, Committee on Banking, Housing, and Urban Affairs, SD-534 Dirksen Senate Office Building, Washington, D.C. 20510.

With kind regards,

Sincerely,

Paul Freedenberg

Paul Freedenberg
Staff Director
Subcommittee on International
Finance and Monetary Policy

PF:sdj

Enclosures

RESPONSE TO WRITTEN QUESTION OF SENATOR HEINZ FROM DR. SHELDON HACKNEY, PRESIDENT, UNIVERSITY OF PENNSYLVANIA

Question: You have endorsed the Sullivan Principles. At the same time, you have also endorsed no new investment in South Africa. It has been argued that S. 635, with its provision prohibiting new investment, would lead companies operating in South Africa to cut costs to the bone in order to generate new capital. How would this effect efforts to comply with the Sullivan Principles? In your opinion, is there an inherent contradiction between no new investment and the social welfare aspects of the Sullivan Principles, or, indeed, between no new investment and the ability of U.S. companies to remain in South Africa and stay competitive as their plant and equipment become obsolete?

Answer: As I suggested in my testimony, the Sullivan Principles have helped to improve working conditions for blacks in those American firms which have endorsed them, and American business in South Africa has been at the cutting edge of progressive labor policies there. I believe that U.S. firms have subscribed to the Sullivan Principles because first, they have a strong interest in being, and in being seen as, good corporate citizens, and second, they recognize that promoting equal employment opportunities for nonwhite workers is both economically and socially constructive and thus promotes stability, at least in the short run, in South Africa. Therefore, I do not believe that, even if American companies were to initiate substantial cost-cutting measures in South Africa to generate new capital, their commitment to the Sullivan principles would suffer.

There is, as you suggest, an apparent contradiction between the worst-case scenario of restrictions on investment leading to withdrawal of U.S. firms and the benefits to black workers derived from the continued presence of progressive American firms. Withdrawal of American firms from South Africa could potentially result in the displacement of black workers who have benefited from the Sullivan Principles. Nevertheless, businesses seek not only a profitable economic environment but also a stable political environment. To the extent that apartheid continues to deprive the majority of South Africans of both political rights and economic opportunities, the South African political environment is likely to remain highly volatile and inhospitable to business. Political instability and social upheaval is much more likely to drive out American business than is a restriction on new investment which, according to a recent report in The Economist, represents about 5% of total U.S. direct investment in South Africa.

Finally, as you know, under S. 635 the restriction on new investment may be waived by the President and Congress if they find that substantial progress has been made toward eliminating even one of the conditions of apartheid specified in the bill. Such a conditional waiver provides an impetus for the South African government, if it wishes to maintain and increase American investment, to take meaningful action on apartheid, and for American businesses, if they wish to promote a stable environment, to encourage the South African government to take such action.

RESPONSE TO WRITTEN QUESTION OF SENATOR PROXMIRE FROM
DR. SHELDON HACKNEY, PRESIDENT, UNIVERSITY OF PENNSYLVANIA

Question: I understand that prior to becoming a University President you were a historian of considerable repute. As a historian, familiar with how change takes place in societies, do you believe enactment of S. 635 would accelerate the process of positive change in South Africa or would it polarize the situation there? I ask this question because in your statement you say you endorse S. 635 "to signal our opposition to apartheid," but do not give us the benefit of your views as to the impact it will or will not have on the process of change in South Africa. I would very much like your views on that subject.

Answer: As my academic work has focussed on the social history of the southern United States rather than southern Africa, I hesitate to draw broad historical conclusions about the process of change in an area of the world in which economic and social conditions are so dramatically different from those of the United States.

There are, of course, certain parellels which might be drawn between the situation in South Africa and the condition of blacks in the United States prior to the civil rights movement - de jure segregation, grossly unequal economic opportunities, officially condoned violence - to name a few. The differences, however, outweigh the similarities. Principally, these differences are that first, in South Africa, these offensive policies are initiated by a minority government, and second, that there is no effective juridical counterbalance to state-initiated discrimination, as in the United States.

One hopes, of course, that the relatively peaceful change which our nation experienced in moving toward equal rights and opportunities would be parallelled in South Africa, but we have already seen there substantially greater violence than that experienced in the U.S. Nevertheless, the United States, I believe, still has an opportunity, through S. 635 and similar measures, to help effect peaceful change in South Africa.

This legislation is a modest step. It does not call for divestment. It is not likely to promote revolutionary change. It does not eliminate or substantially narrow the American economic presence in South Africa. Obviously, we would prefer to be certain as to the outcome of our foreign policy initiatives. I believe that the Administration's current policy of constructive engagement has not been successful in seeking meaningful change, and that the situation in South Africa has become increasingly polarized. Modest pressure on the part of our government toward the South African regime can, I believe, accelerate the process of peaceful change. To take no action would signal that the United States endorses a status quo which is fundamentally abhorrent and which, in the long run, cannot be sustained by a minority government. To adopt substantially more stringent sanctions than those embodied in S. 635 would limit our future ability to foster peaceful change. Economic and political leverage such as that advocated through legislation such as S. 635 represents the best opportunity for promoting the future peace and stability of South Africa, an outcome which is clearly in our national interest.

EDWARD M. KENNEDY
MASSACHUSETTS

United States Senate
WASHINGTON, DC 20510

March 28, 1985

Michael Sovern
President
Columbia University
New York, New York

Dear Michael:

As you know, on March 7, 1985, Senator Weicker and I introduced The Anti-Apartheid Act of 1985 (S. 635). I am enclosing a copy of that bill for your information.

The purpose of this letter is to ask for your views on this proposed legislation. I know that you have given a good deal of thought to the situation in South Africa and about ways that Americans can work most effectively to assist in the effort to eliminate apartheid, I would be grateful for your thoughts on the approach that we have proposed in this legislation.

Thanks for your willingness to help out on this.

Sincerely,

Edward M. Kennedy

Columbia University
in the City of New York
NEW YORK, N.Y. 10027
PRESIDENT'S ROOM

April 15, 1985

Dear Senator Kennedy:

Please forgive my delay in replying to your letter of March 28, 1985, but it did not reach me until April 10. I am happy to have the opportunity to comment on S.635, the proposed Anti-Apartheid Act of 1985.

I share your concern that quiet diplomacy on the part of the United States has not had any positive impact on the invidious racist policies of the South African Government. It is, as you say, time for more efffective action by the United States, and I believe that the legislation you have introduced is a desirable step in that direction.

I know that President Bok took the same position in his letter to you of April 2, and I concur wholeheartedly in the views expressed in that letter.

At Columbia, we have already taken the two actions S.635 would require of American companies and institutions and have actually gone beyond them. In 1978, the Columbia University Trustees decided to divest our securities and deposits in financial institutions which provide new or continuing access to capital markets for the Government of South Africa. The University has divested itself of approximately $2.9 million of securities in such institutions and does not maintain deposits with such institutions. As you know, section 3 of S.635 similarly prohibits loans to the South African Government.

Section 4 of S.635 provides for prohibitions against new investments in business in South Africa. A year ago, our Trustees, in response to a request from the Columbia University Senate, imposed a moratorium on increased investment in securities in companies doing business in South Africa, pending review of a Columbia University Senate report on divestment.

In addition, the University will not invest in stocks of companies doing business in South Africa unless they have employment programs and practices that ban segregation, afford equal pay to blacks and whites, and otherwise advance the interests of black South Africa.

I am pleased to support S.635.

Sincerely,

Michael I. Sovern

The Honorable Edward M. Kennedy
United States Senate
Washington, D. C. 20510

EDWARD M. KENNEDY
MASSACHUSETTS

United States Senate
WASHINGTON, DC 20510

April 3, 1985

Dr. David Hamburg
President
Carnegie Corporation
437 Madison Avenue
New York, New York 10022

Dear Dave:

I am enclosing a copy of the Anti-Apartheid Act of 1985 which Senator Weicker and I introduced on March 7, 1985. I am also enclosing a brief summary of the bill's provision.

I would be extremely grateful if it might be possible for you to give me your views on this legislation. The Senate Banking Committee and the Senate Foreign Relations Committee will be taking up the subject of South Africa later this month, and I know that any comments you might have on this piece of legislation would be deeply appreciated.

Thanks for your help.

Best always,

Edward M. Kennedy

Hamburg

Carnegie Corporation of New York

437 Madison Avenue, New York, N.Y. 10022 • (212) 371-3200

David A. Hamburg, M.D.
President

BY HAND

May 15, 1985

Senator Edward M. Kennedy
United States Senate
113 Senate Russell Office Building
Washington, D.C. 20510

Dear Ted:

I am very grateful for your inquiry about pending anti-apartheid legislation and for the invitation to testify. I deeply regret that I simply could not work out a way to testify because of the extraordinary pressures on me this month. My presidency of the American Association for the Advancement of Science reaches its peak responsibilities this month, culminating in the big annual meeting at the end of May in Los Angeles. Since the AAAS is the umbrella organization for all of American science, this really has been a demanding as well as a fascinating enterprise. In addition, May happens to be the peak month for Carnegie responsibilities, including a three-day retreat in San Antonio on the Mexican-American community (see enclosed article by Fred Hechinger from the New York Times), and also on U.S.-Mexican relations. Incidentally, it turned out to be a superb retreat, and I would welcome a chance to discuss these subjects with you the next time we meet.

In any event, the best I can do under the circumstances is to send you a statement on South Africa that I recently prepared for another purpose. It is my own perspective on the Carnegie Inquiry including a few conjectures on its larger significance. I hope it will be of some use to you.

We have had recent visits from Francis Wilson, the Inquiry's director -- and I am very grateful for your seeing him -- as well as Allan Boesak who played a major part in it re: church and poverty.

Letter to Senator Kennedy
May 15, 1985
Page Two

The work of synthesis is going forward effectively. There will be a pulling together of major findings, as well as strategies for change that build on the findings. In addition, there will be a book of photographs and several films illustrating key aspects of the Inquiry. I am hopeful that all this will contribute to public understanding and to constructive action.

Please do not hesitate to ask if there is anything in which I can be helpful. I will do my utmost.

With very best personal regards.

As always,

VIP

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW

OWEN F. BIEBER PRESIDENT
RAYMOND E. MAJERUS SECRETARY-TREASURER

VICE PRESIDENTS

BILL CASSTEVENS • DONALD F. EPHLIN • ODESSA KOMER • MARC STEPP • ROBERT WHITE • STEPHEN P. YOKICH

IN REPLY REFER TO
1757 N STREET, N.W.
WASHINGTON, D.C. 20036
TELEPHONE (202) 828-8500

March 14, 1985

F.P

Pro 635

Dear Senator:

A group of Senators has recently introduced the proposed Anti-Apartheid Act of 1985 (S. 635) containing sanctions against South Africa. The UAW strongly supports this legislation as a reasonable, entirely appropriate and long-overdue response by the United States to pressure the government of South Africa to end its oppressive system of official racial segregation.

The evils of the apartheid system in South Africa are recognized by Americans regardless of political persuasion. The UAW believes this country should not be assisting that system in any way — directly or indirectly. The sanctions proposed by S. 635 would prohibit new investment in South Africa; ban bank loans to the South African government; stop importation of kruggerrands into this country; and halt computer sales to the South African government.

S. 635 is an eminently sensible response to the behavior of the government of South Africa toward its people who continue to suffer from the apartheid system with its violations of basic human rights. It is time our government took effective action to help bring about an end to apartheid. S. 635 represents such action.

You can demonstrate your concern by joining your colleagues who are sponsoring S. 635, a bill which should be overwhelmingly approved by Congress. The UAW urges that you become a cosponsor of S. 635 and that you work for its approval.

Thank you for your consideration of the UAW position on this important issue.

Sincerely,

Don Stillman
Don Stillman, Director
Governmental & International
Affairs Department

Dick Warden
Dick Warden, Director
Legislative Department

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VIEWS ON S-635
DONALD KENNEDY, PRESIDENT
STANFORD UNIVERSITY
MAY 23, 1985

It is a privilege to be able to comment on Senate Bill 635, the Anti-Apartheid Act of 1985. I welcome the opportunity to supply these views, which are mine, and do not represent the official position of Stanford University.

There are, I believe, some objectives that nearly all Americans share. South Africa today represents an especially repugnant form of institutionalized injustice -- special because of the intense degree to which one racial group restrains the freedom and violates the basic human rights of other racial groups. We have a responsibility to help end apartheid and to help guarantee individual freedom. As a shorter-term objective, we should try to help ameliorate oppression by the South African government, and to eliminate as many of the restrictions as possible that are now placed on the rights of black South Africans.

In my judgment, the present policies of our government have not supplied significant incentives for the attainment of those objectives. It is thus not surprising that students, at Stanford and elsewhere, are focusing upon total divestment as a strategy for supplying that incentive. I personally feel that disinvestment by non-profit shareholders will not be an effective approach; and even if that approach were to bring about significant withdrawal of foreign investment from South Africa, I am not at all certain that the results would be beneficial to those we are trying to help.

Accordingly, I favor the principles embodied in Senate Bill 635, which applies both positive and negative incentives toward changing the laws that make the apartheid system possible. The essential provisions of the bill apply economic pressures on the South African government now, rather than adopting the "wait and see" approach that characterizes some of the other currently proposed legislation.

I continue to be concerned lest U.S. action involuntarily inflicts hardship on innocent third parties, especially the non-whites we intend to help. My reading of S-635 is that it is carefully shaped not to reduce employment opportunities for non-whites, and that it will not impede such progress as is now being made by the black trade unions. Rather, the result should be a retardation of growth by the limitation of credit and of new investment. With these provisions, I am in full agreement.

I do have two specific suggestions. The first would, I think, make the application of economic sanctions significantly more effective. As the Study Commission on U.S. Policy Toward South Africa, chaired by Franklin Thomas, reported in 1981, current export control regulations cannot be effectively applied to products manufactured by wholly-owned subsidiaries of U.S. firms in South Africa. Currently, the Export Administration Act and its derivative regulations impose few if any effective restrictions on the activities of U.S. subsidiaries, as long as they produce products with non-U.S. components and do not employ manufacturing controls or data sent from the United States. The application of export controls to such operations would represent an important extension of the sanctions envisioned in S-635.

Second, I believe that certain of the sanctions now proposed could be made both more fair and more effective. S-635 currently proposes to prohibit computer sales to the South African government, including spare parts and servicing for computers already sold. It seems to me unfair to single out a particular product category for use in such sanctions, especially one that has such a broad range of benign and humanitarian uses. It seems to me that this provision could both be broadened and aimed more directly at those particular uses that support the maintenance of the apartheid regime in South Africa. Thus, I would prefer a general provision restricting exports of supplies and equipment destined for use by the South African military or police, with exception for humanitarian (e.g., medical) uses. This could be accomplished by amendments to the Export Administration Act, so that no goods or technology (except technical data generally available to the public) could be exported for use by military and police entities in South Africa. It would then be possible to list specific humanitarian objections, as is now done in regulations written under the Export Administration Act.

I welcome the opportunity to provide these comments, and I hope they are helpful. I am, in general, quite cautious about applying economic sanctions to another nation with the intent of changing conditions there. But apartheid is a form of mandated segregation that no civilized nation should continue to tolerate. Accordingly, I support this legislative effort to apply our national influence on behalf of freedom and dignity for all of South Africa's citizens.

# ANSWER TO QUESTION PROPOUNDED BY SENATOR WILLIAM PROXMIRE
FROM
ROBERT D'AGOSTINO, National Legal
Center for the Public Interest, Washington, D.C.

Q. In your career as a law professor and at the Department of Justice, you are not noted for being shy about fighting for what you believe in. Don't you think that if you were a black living in a totalitarian state such as South Africa, you would be tempted to use violence to win your rights? I ask this because Bishop Tutu claims that the present policy of apartheid is driving blacks into the arms of the communists.

A. Before I answer your question, I would like to make plain that I do not believe that South Africa is a totalitarian state. I do believe that the system of apartheid is a totalitarian system imposed upon the black segment of the South African population. I also believe that that system has changed greatly since its imposition and is, in fact, breaking down.

In answer to your question, I do not know that I would use violence, although I would be sorely tempted to disobey some of the laws, at a minimum. Being forceably separated from my family or forceably removed from where I live would certainly engender a tremendous resentment in me that very well could lead to violence. The short answer is that I understand very well how many could be led to violence. Unfortunately, in present-day South Africa the violence of certain blacks is as much directed against other blacks or coloreds as it is against the government. The situation there is highly complex and fraught with much difficulty.

One point that I made in my paper was rather pessimistic in that change is rarely rapid enough for those demanding it and always too rapid for those fighting it. Yes, I believe the pace of change must quicken. No, I do not believe that the bill will have that effect.

It is crucial that reform not come only from the top down. These recent gestures from the South African government, though helpful and humane, will not quell the rising resentment. Blacks have experienced in their job areas a certain feeling of equality. At least in the American companies they are close to equality of pay for equal work. They have been able to form their own unions and choose their own leadership. Presumably some would choose to live in a black homeland. In fact, of the four homelands given independence, two are doing rather well and two rather poorly. But of course the key to the sentence that I just wrote is "choose."

The end of our attempt to influence the internal affairs of South Africa are two: (1) to maintain a government friendly to the United States and the Western alliance; (2) to have a government built upon the principles that made the West great, that is, respect for the individual and liberty. How best might we achieve these two ends? Certainly not by being punitive or withdrawing involvement in South Africa. It is our very involvement that has helped lead to a breakdown of apartheid insofar as it has broken down. South Africa is a country divided against itself. Economic liberty and a totalitarian system cannot co-exist. The increasing economic power of blacks along with reforms largely pioneered in American companies must inevitably lead to the end of apartheid. What will come after is the real issue. To repeat it is the economic involvement of the United States and the growing economic strength of the blacks that has led to their increased power and led to the concessions by the South African government.

What must we do? We must encourage the government of South Africa to bring together the leaders (I did not use the word responsible before the word leaders) of all the peoples of South Africa, that is, blacks, colored, Asian, and white. The leadership should be drawn from both major white ethnic groups as well as the various colored groups and the various black tribal groups. People must feel that they are participating in the change. The great federalist debate in this country not only gave the people the feeling of participation, but also served an educational purpose. Only through an on-going discussion can the people focus on what they really want, and I am sure that what the people, black and white, want is liberty, security, and fairness. With all groups participating, a solution can be worked out that will insure those things. We must maintain our involvement, particularly our economic involvement, so that change will continue while urging the South African government to accelerate change through listening to and being guided by an on-going public process involving leaders of all of the groups. This is the only way to avoid violence because this is the only way to make a population accept relatively gradual change from the black perspective and more rapid change than would be wished for from the white perspective.

There are no shortcuts. History is replete with the consequences of rapid, read violent, change. It is replete with the resistance of ruling elitist change. History also has instances of ruling elites giving way, being flexible, being accommodating, and being tolerant. I will say again the words with which I opened my oral testimony: that we must help the South African government and the ruling white elite of that country open their eyes to the world we are living in today.

RJD/ckm

June 7, 1985

Senator HEINZ. The Chair thanks all of you for your participation. I appreciate it and I will be submitting a question or two for the record as well.

Our next witness is Donald F. McHenry. He was our Ambassador to the United Nations in the late 1970's. He's now with the Georgetown University School of Foreign Service. Don, it's nice to see you. Welcome. I understand you don't have a written statement but you have some things you would like to say. I understand also that the reason you don't have a written statement is you have been on the road and you just got back late last night, which is a tough time to get anything but a plumber in Washington, DC. Please proceed.

STATEMENT OF DONALD F. McHENRY, FORMER AMBASSADOR TO THE UNITED NATIONS; GEORGETOWN UNIVERSITY, SCHOOL OF FOREIGN SERVICE

Ambassador McHENRY. Thank you very much, Mr. Chairman. I have, in fact, been on the road and out of the country and I was out of the country at the time your letter arrived inviting me to appear here. I do have some preliminary remarks to make.

I should inform the committee that I appeared before a similar committee in the early 1970's when I was on leave from the Department of State and at the Brookings Institution and their counsel on foreign relations. I did an extensive study of American investment in South Africa and in 1973 I published my conclusions with regard to that situation.

DIVIDE U.S. POLICY TWO WAYS

I said then that I thought we should divide our policy toward American corporations in two ways: Those who were already there and those who are contemplating going into South Africa.

With regard to those who were already there, it seemed to me that it was necessary that they stand on the cutting edge for change, that they adopt within their own institutions, their own organization, and with regard to their employees in the community the most progressive worker and employment attitudes that they could; that it was important that they not make any substantial new investment in South Africa because I felt that there were limits to what they could do even in those areas involving the operations of their own companies and with regard to their employees out in the community.

With regard to those who were not there, I suggested in the early 1970's that they should not enter into South Africa. I do so because I believe that with the best of intentions and with the most enlightened labor policies possible, they would still have limited influence with regard to the structure of apartheid. In fact, they could do very little to affect the structure of apartheid, and by structure I mean the ability of all South Africans to participate fully in the Government of that society.

I have seen no reason to change those views in the period which has intervened. As a matter of fact, it is clear to me that the situation has deteriorated.

It is true there are better working conditions and there has been a positive effect on the part of American corporations with regard to their own operations and with regard to influencing the operations of other companies. But that positive effect, I would remind you, is still within the context of apartheid. It's still trying to influence the way that the corporations operate within their own direct sphere. It has had little or no effect on changing the structure of apartheid.

The structure remains. Denationalization continues. There have been more removals. The dehumanizing process of splitting families continues. And outside of its borders South Africa has embarked on a policy of destabilization which has been very destructive in my judgment with regard to the neighboring country.

What is most deplorable is that we have seen a continuation of what I would call a process of radicalization. Those who had before been willing to sit down and try and change and seek some peaceful change of the situation in South Africa have seen the road for influencing the situation more and more narrow.

The result has been that there is increasingly a belief, particularly among the young, that the only way that change can be brought about is through violence.

In the intervening time, the United States has in the last 4 years followed a policy which has been called, for good or evil, constructive engagement. Quite frankly, I think the first thing that ought to be done by the administration is to bury that term as deeply as it can.

We have praised the Constitution, or at least looked upon the new Constitution as a step forward, when South Africans themselves are deeply divided with regard to that Constitution. Some look upon it as the first step of change. Others look upon it as the last step to prevent further change in that society.

We have not spoken out as forcefully as we could with regard to destabilization policy. We have allowed our own interest with regard to Cuba to further set back a settlement with regard to Namibia.

And finally, despite the fact that the United States was a leading advocate of the arms embargo in 1963, supported the making of that embargo mandatory in 1979, the United States has found itself with increased arms sales to the South African Government, rationalizing it sometimes on the basis of a gray area, rationalizing it sometimes on the basis of humanitarian questions, but clearly, in my judgment, in violation of the U.N. arms embargo which we have a treaty obligation to support.

Now, we are currently in a large debate and have been for some time with regard to investment and disinvestment. There is a great deal of oversimplification with regard to this question. Quite frankly, disinvestment is not going to bring down the South African Government and I doubt seriously if even its most ardent advocates expect it to be.

On the other hand, it does not seem to me that the simple process of economic development or quiet diplomacy as it is called is going to bring about the structural changes which will be necessary if there is to be an avoidance of further conflict in South Africa.

It seems to me that the bill before you is one of many pressures which can contribute to change in South Africa. Some of that pressure will come about through the process, the evolutionary process of education in that country. Some of it will come about as a result of the boycotts, the strikes, and the violence which occurs there. But some of that will come about as a result of the unmistakable position of the United States and the international community with regard to apartheid.

BILL IS AN APPROPRIATE FIRST STEP

It seems, therefore, that this bill is an appropriate first step. It is very limited but it is, in my judgment, an appropriate first step. It sends a message. It sends a message to African citizens who regretfully over the last 4 years have come to look upon the United States and its Government and policies as supportive of apartheid. It sends a message to our own Government that when the Government is not following policies which are supported by the mainstream of American society that Congress and others have a responsibility to influence the operation.

It sends a message to the South African Government which I believe mistakenly interprets or mistakenly uses the current situation to prolong the agony which is present in that society.

Finally, I think that this is an important step concerning the very peace and security which is important for the people of South Africa and the people of the area and the international community. There is no question but that the violence which we have seen is going to grow unless there is progressive movement toward change, and there is no question that that violence will spread into the surrounding countries and into such an unstable situation are likely to move those very political groups and developments which I think the Senator earlier was referring to when he talked about the changes which took place in Iran and various other countries. In other words, we are creating a situation, a climate for radicalization, unless we and others, and the South Africans, do what we can to make changes now when there remains a possibility for a settlement with less violence.

There is more than this. Here one gets into, I think, largely a demonstrated faction. I would like to see the United States fully enforce the arms embargo. I would like to see the United States once again develop the kind of communication with citizens of South Africa, of all citizens of South Africa, that I think we once had and that I regret that we have lost. And there may be in the future and the time remains in doubt—there may be an opportunity and a necessity, if you will, for the Congress to enact more sweeping legislation with regard to this area.

But I will repeat again, it seems to me that this is an appropriate first step. Thank you.

Senator HEINZ. Ambassador McHenry, thank you very much. You were not only our Ambassador to the United Nations but together with Andrew Young when he was Ambassador were among the most influential voices in the Carter administration with respect to policy in Southern Africa.

What elements of S. 635 did the Carter administration advocate with regard to South Africa?

Ambassador MCHENRY. S. 635 contains four elements and none of those were advocated at the time and I don't believe that we were at a point at that time that we are now. We have seen, I think, the steady deterioration over the last year, I would say steady deterioration over the last 4 or 5 years, with regard to South Africa.

That is why I put my comment in terms of appropriate first step. It seems to me that this is a step which is consistent with conditions which we find now.

There were other measures, however, which were enforced during the Carter administration which are not enforced now and which I regret are not being enforced.

One of those is the arms embargo. An earlier witness has given you an indication of how many changes have taken place with regard to that. Another of that was the very positive and I think constructive role which we played—and I played personally with regard to negotiations on Namibia. Those have gotten nowhere and in fact I think they have been set considerably back.

But none of those steps was at the time advocated, but I don't believe that we had reached the point where we have now.

Senator HEINZ. Now, you say the situation is worse today than it was during the Carter administration. Objectively, now, is the situation for the black majority in South Africa worse today than it was then?

Ambassador MCHENRY. Senator, that depends on what aspect of it you are talking about. There is no question in my mind that there have been improvements in some of the aspects of urban living in South Africa.

Senator HEINZ. But isn't most of that just window dressing?

SOME IMPROVEMENTS IN URBAN LIVING

Ambassador McHENRY. No; it's not window dressing. I think it's important that one acknowledge that there have been substantial improvements in some aspects of urban living.

What I'm saying, however, is that none of these changes which we have seen—and we have seen many—none of them address the structure of apartheid. None of them provide an opportunity for the citizens of that society to participate in their Government and to themselves decide whether there is going to be a repeal of a Mixed Marriages Act or whether there's going to be a new constitution or whether they are going to have a continuation of some of the laws like the Terrorism Act.

In that regard, in regard to the structure, there has been no change.

Senator HEINZ. Why during the Carter administration wasn't there a more aggressive attack on apartheid which as you say has remained virtually the same for the last 8 years? It was no less repugnant then I hope than today. I really have some difficulty understanding what the difference of the passage of 4 or 5 years makes when we're talking about an egregious wrong.

Ambassador McHENRY. Senator, I think most South Africans would—certainly the South African Government would say that the Carter administration was much tougher on them than the current administration. I don't think that there is——

Senator HEINZ. I'm not talking about rhetoric.

Ambassador McHENRY. I am not talking about rhetoric either. It was in the Carter administration that the arms embargo was made mandatory. It was in the Carter administration that the restrictions on sales to the South African military and police were enforced. It was in the Carter administration that restrictions were placed on sales and where some computers went. It was in the Carter administration that negotiated Resolution 435 on Namibia. The Carter administration tried to set forth a series of steps with regard to Southern Africa.

Senator HEINZ. As I understand what you've said so far—and I'm not disagreeing that you didn't do those things—what you've said I think you would agree is that they didn't accomplish anything in terms of apartheid.

Ambassador McHENRY. No, I wouldn't say they didn't accomplish anything.

Senator HEINZ. I said in apartheid.

Ambassador McHENRY. I would remind the Senator that the Sullivan principles were brought into effect under the auspices of the Carter administration. I was present in the room when we finally persuaded the last of the companies to sign that measure. So that too was a contribution.

The President set forth a policy with regard to all of Southern Africa and this was communicated to the South African Government. We had a complex of measures. We had Zimbabwe on our hands. We had Namibia on our hands. We had apartheid on our hands. I think we went a long ways toward resolving the first two. We had to set priorities.

With regard to apartheid, there was clear indication of policy. The South Africans were clearly told that if there was no progress toward full political participation there would be a deterioration of relations between the United States and the South African Government. There was no progress. There was the deterioration.

Now we have not changed the structure. I am not arguing here that these measures are going to change the structure. I don't think they will. Will they, however, add additional pressure? Will they change the perception, the misperception which is present? Will they contribute to change? I hope so.

Senator HEINZ. Let me ask you this. Did you and Ambassador Young at any point at which the Carter administration was contemplating increasing the pressure, some of which you just described, consider the application of a ban on new investment and did you reject it? If so, why?

Ambassador McHENRY. Well, I was in New York and not in the State Department in Washington. I don't think that a ban on investment was considered but I don't believe that it at the time was appropriate. I would say this. We cannot overlook the direction of events over the last year or over the last several years.

Senator HEINZ. I don't think anybody is. That's why we are having these hearings.

Ambassador McHENRY. And that, it seems to me, has provided more fuel for these proposals than anything else. The fuel for these proposals comes not from the United States Government, not from the students, not from the churches, but from actions on the part of the South African Government.

Senator HEINZ. I don't think anyone would contest that, Don. You mentioned the Sullivan principles. This is my last question. I'm going to run out of time shortly.

In the next panel, Reid Weedon, of A.D. Little, will argue that it is important to remember that, "the evil of apartheid will end only by vote of the white South Africans or by revolution."

Is it possible to achieve our goals while avoiding revolution in South Africa, and what policies would you recommend for the present administration to pursue in order to maximize United States influence and leverage with the Government of South Africa, particularly if our goal is to induce the South Africans to move toward full political participation for all its people?

HOPE TO AVOID FURTHER VIOLENCE

Ambassador McHENRY. Senator, I would hope that it would be possible to avoid further violence and bloodshed in South Africa. I am reminded, however, of the lines in Allen Payton's book, "Cry of the Beloved Country," where he said or he has one of his characters say that he's afraid that by the time whites learn to love, blacks will have learned to hate. I think we are seeing that in South Africa. It's taken a long time. In fact, almost any visitor that goes there even today marvels at the fact that there is still so much moderation among the African population.

We can't change South Africa. It is not for the United States to do so. South Africans themselves will have to get together and come up with that political consensus which allows them all to govern themselves, and there will be a series of compromises along the way just as there have been compromises within this society, and there are compromises in every society that I know of.

The point is that everyone has to participate in reaching those compromises. What we can do is make clear what our own policies and attitudes are. We can try to reduce the extent that anything that we have control over contributes to the continuation or the strengthening of apartheid. That is all these measures are aimed at doing. It does not seem to me that they aim at anything else.

We would be fooling ourselves if we pretend that they will bring down apartheid. They won't. But they will correct the perception and they will ensure that the United States does nothing to continue it and strengthen it.

Senator **Heinz**. My time has expired. Thank you very much. Senator Proxmire.

Senator **Proxmire**. Thank you, Mr. Chairman.

Ambassador McHenry, I am extremely impressed. I think your statement and responses to the chairman have been very, very persuasive and I want to thank you for them.

There are those who say that South Africa is really a bulwark against communism and we need to help South Africa in our efforts to stem the tide of communism in an extremely important area of the world.

Others, such as Bishop Tutu, claim that the greatest inducement to the growth of communism in South Africa is the apartheid policy of the present Government and we must help eliminate apartheid if we want to stop the growth of communism there. What are your views on this?

Ambassador **McHenry**. Senator, I think we have seen the answer to that question throughout Southern Africa. To the extent that there has not been an opportunity for growth or change, those who have sought the redress of their grievances have become increasingly radicalized. Those who have sought the redress of their grievances have increasingly turned to the Soviet Union and other forces which we may not like for support. And along the way many of them have become advocates of the policies of communism.

I think any time that you have such instability, any time that you have such longstanding legitimate grievances without recourse, you provide the most fertile soil that I know of for communism. I have long said that South Africa, far from being a bulwark against communism, is one of its most positive elements in Southern Africa.

NEED NEW CONSTITUTION

Senator **Proxmire**. As you know, the Progressive Federal Party, the PFP, has long been regarded as the white conscience of racial justice in South Africa and it is the official opposition party in the South African Parliament. Progressives talk about a need for a new constitution in which everyone in South Africa is given full rights as a citizen and in which there is genuine power sharing among racial groups.

Under this system the homelands policy would be scrapped and blacks would be allowed to vote and be represented in a new broad-based national Government. However, blacks would not be allowed to dominate the Government. Whites would be permanently protected by a minority veto under a special constitutional arrangement.

Do you think such a plan has any merit or do you think we should press South Africa to go forward on a one-man-one-vote system.

Ambassador **McHenry**. Senator, I indirectly answered that earlier when I said that all South Africans ought to get together and try and work out that political consensus which enables them to govern themselves and I suggested that whatever consensus that they may get today may not be adequate for tomorrow. It may be that what the Progessive Federal Party has outlined is a first, or second, or third step along the way. In my judgment, I doubt if it's going to, in the final analysis, be satisfactory.

That does not say that it is not something which ought not to be done as a step along the way. But the process of government is the process of constantly trying to find a political consensus. South Africa's problem today is because it has no political consensus.

Senator **Proxmire**. Thank you, sir.

Thank you, Mr. Chairman.

Senator **Heinz**. Senator Sarbanes.

Senator **Sarbanes**. Thank you, Mr. Chairman.

Mr. Ambassador, I'm struck by the fact that the focus tends to be on the policy as it impacts within South Africa, but I want to shift from that focus for a moment and ask you how high a price you think we are paying for an American policy that is perceived as indulging the apartheid regime and all it stands for? How high a price are we paying elsewhere in Africa with respect to American interests and indeed elsewhere in the world?

Ambassador **McHenry**. Senator, that is hard to gauge. It is hard to gauge for a number of reasons. If you are a poor African country dealing with the United States and you don't like the policy of the United States, under the current policy you had better keep quiet because aid is likely to be affected and other programs are likely to be affected.

DETERIORATION OF RESPECT

It is my judgment, however, that there has been a steady deterioration in the level of respect for the United States among other African countries as a result of this policy. The policies have been criticized by African countries. More than that, the United States finds that it has little or no support with regard to its South African policies among some of its allies, particularly with regard to the actions which have taken place in Mozambique, Angola, and Namibia. The once united front presented by the compact group is no longer.

We have been sharply criticized by our colleagues and our closest allies with regard to that worldwide, it seems to me.

In the long term, when we find ourselves sticking with a government to the bitter end long after we know that we should have taken steps to change our policy and long after we know that government should have taken steps to change its policy, we are likely to see the kind of thing that we have seen in Iran, or Cuba, or Nicaragua, or the Dominican Republic. The list is very long of countries where the United States has found itself supporting policies which were rejected by their inhabitants, found the situation radicalized, and then we worry—we get concerned when a radical government takes place. But all the time when change could have been taken under more moderate circumstances we didn't speak out strongly enough.

That is the situation in South Africa today.

Senator **Sarbanes**. Just over 5 weeks ago Deputy Secretary Dam, testifying before this committee, pointed to progress on Namibia as an instance of the successful working of the constructive engagement policy. Within 3 days, the South African Government moved unilaterally and—at least in the perception of many, shortcircuited U.N. Resolution 435 and the work of the Contact Group, so that our Ambassador in South Africa was in to lodge an American protest with the South African Government.

This morning's paper carries a major story pointing out that the Lusaka accord, which again was pointed to by Secretary Crocker as an effective instance of constructive engagement, has been totally violated by the South Africans in Angola. In fact they have their military in the very north of Angola and were apparently intending to commit sabotage against American economic interests there, as I understand it.

I wonder if you would comment on the administration's assertion about the success of its constructive engagement policy with respect to Namibia and Angola.

Ambassador **McHenry**. Senator, as you know, I was very much involved in the negotiation of U.N. Resolution 435. I don't believe, frankly, that any progress has been made with regard to solving the problem of Namibia. On the contrary, I think we have taken some steps backward.

I am not suggesting to you that the administration could have resolved it. I left it unresolved. But I think we have marched backwards.

We introduced the question of the Cubans and we allowed the South Africans to follow a policy of destabilization which far from obtaining our objective of getting the Cubans out of Angola resulted in making the Angolan Government more dependent today on the Cubans than they were before. And certainly the action which was reported today in the newspaper of South African saboteurs in the far north of the country is likely to make the Angolans even more justified in keeping the Cuban presence and not trusting the South Africans when they say they want peace in the area.

There has been also an effort to take a great deal of credit for what went on in Mozambique, the Empinadi accords. I hope the Empinadi accords are successful. But quite frankly, I would not take very much credit for them. The Empinadi accords came as a result of the destabilization policy of the South African Government, military actions by South Africa's military, strong support for the MNR and its destruction of infrastructure in the area, and they also came about as a result of the drought which came along at the same time and the ineffective policies of the Mozambique Government.

What I am suggesting to you is that constructive engagement was not the major factor. The major factors were those other things that I referred to.

Senator **Sarbanes**. Thank you.

Senator **Heinz**. Senator Riegle.

Senator **Riegle**. Thank you, Mr. Chairman.

Let me thank you very much for coming today. I know it's not easy when you're moving around to come to a hearing of this kind, but I thought your statement was certainly eloquent, and also very, very important—very important to the country to hear and for the Senate to hear, and I think an excellent guide to us in terms of where we are and how we try to sensibly work our way forward. So, I am very appreciative of the effort and the thoughts that you shared with us today.

Earlier in the discussion that we had here at the table among Senators, the assertion was made that the living standard of black people in South Africa was better than in any other country in Africa. I found that to be a breathtaking proposition, and I would be interested in your view on that proposition?

Ambassador **McHenry**. Senator, it's one of those true but irrelevant statements. I wouldn't doubt that the living standard among blacks in South Africa is higher than most or all other areas in sub-Saharan Africa. But so is the gross national product. So, is the level at which other citizens in the society live. The standard by which South African blacks ought to be measured is not the standard of Chad or Mali but the standard of South Africa. How do South African blacks compare with South African whites?

It's when you use that as a measurement which makes it very important. And again I say the observation I've heard and it's part of the sort of fill and propaganda type material, but it's totally irrelevant.

Senator **Riegle**. I think the phrase "living standard" tends to connote dollars and cents and material well-being. I was attempting to broaden it out more to the notion of what your whole condition is—how you are treated as a human being, what kind of societal situations you find yourself in that defines all aspects of your life, the quality of your life, the quality of your being, what your standing is in society.

It seems to me that, if that broader definition of living standard is used in terms of any measure of civil rights, or human rights, or legal rights within the governmental system, there is an enormous factor there that—I'm not sure anyone can understand that's not inside that experience.

Ambassador **McHenry**. Right.

Senator **Riegle**. Since one cannot place themself inside a black person's body in South Africa, I'm not sure any other person can begin to comprehend what that type of existence really means.

Yet, a picture should be drawn, should it not? Could we find some way to bring this pertinent point into even a superficial discussion of living standard?

DEGRADATION BECAUSE OF RACIAL ORIGIN

Ambassador McHenry. Well, I would agree with the Senator. That's one of the reasons why I said the observation is irrelevant. It doesn't cover the whole picture. It's irrelevant in economic terms in which it is presented, but it is even more irrelevant if one is talking about apartheid. In no other society do you have government-imposed racial discrimination or do you have determination of birth to grave on the basis of the one thing that an individual cannot do anything about; namely, his racial origin.

I think the most poignant way of looking at South African society and one which I continue to say and tell people tells you a great story about the society is to go into a pass port and see people move through at the rate in which they are moving through as the Government tries to enforce its influx control laws. It is to go through even an urban area like Soweto and see in a day the number of children around with little or no supervision because their families have been split because both mother and father have to find some kind of way to eke out a meager living. It is to see the trains moving back and forth in the evening taking the people from the city to the rural areas. It is to see the desertion of a city in the evening. It is to talk with an educated South African and find the limits which he finds imposed upon him. It is to hear Bishop Tutu, as he did on Ted Couples' Show several weeks ago, ask why it was that he, a citizen, didn't have the same rights as the person that he was talking to.

That gives you a picture of South Africa.

Senator Riegle. Thank you.

Senator Sarbanes. Would the Senator yield?

Senator Riegle. Yes.

Senator Sarbanes. I simply want to commend my colleague from Michigan for I think bringing the hearing back to a very interesting focus. We get into the practicalities of how this will work, which way it will impact, and I think we tend to lose sight on occasion of the fundamental overwhelming moral issue that's presented.

There were those who asserted when the slaves were set free that their economic circumstances would worsen and in fact it did in some instances worsen, but that, of course, it seems to me is no basis to argue for slavery. And, I think, Senator Riegle's focus again on the fundamental issues of human dignity, of the individual's right to participate in his society and to shape his course and his own destiny and the destiny of the society is in the end why this is such a pressing issue and why I think the focus in this country which has now come upon it in recent times is not going to recede. I think that it's going to deepen and broaden and that it will continue to be a prime issue on the national agenda, and that's why we need to come to grips with it in a constructive way in the Congress in the form of legislation.

Senator Heinz. Senator Sasser.

Senator Sasser. Thank you, Mr. Chairman.

Mr. Ambassador, good to see you again here today.

Ambassador McHenry, in your opinion, what can the U.S. Government do now today that would so fundamentally challenge the continued existence of apartheid that the effect would cause an erosion in that policy perhaps leading to a change in that policy? What could we do today about it?

Ambassador McHENRY. Senator, I don't look upon social change in such a short term nor do I believe that the United States is that all powerful in difficult situations.

Change is going to come about in time in South Africa. It's going to take time. The question and the whole debate is not over the manner in which change takes place. If this debate was over when and how, it would be much less heated. Unfortunately, the debate is still over whether.

Once South Africa answers the question of whether, then we can all engage in a rather respectable debate in which there is a great deal of compassion and understanding of the very difficult situation in that country with regard to when and how things are going to be accomplished. But they haven't moved that far. They haven't made the commitment to structural change.

Once that commitment is made, there will be a great reservoir even among the Africans with regard to how to work out the process.

Senator SASSER. I quite agree with you that change is not going to come quickly and it's not going to be rapid. At least if it comes quickly and very rapidly, my judgment is that it might not be the sort of change that we in the United States would particularly want. It might be a very radical change that would move South Africa in a direction that we would consider not in the national interest of the United States.

But what I'm trying to put my finger on is what could we do as a government that would bring the greatest pressure on South Africa to change the policy of apartheid, to move them in the direction of making the decision, "Yes, we are going to change it." What do we do that might be contagious, not just as between ourselves and South Africa, but between ourselves and other countries to cause this to happen?

Ambassador McHENRY. Senator, I should say many of us on the panel before me and I have in my own remarks sought to try and put these actions proposed in the bill in perspective and to suggest that they were limited measures.

Senator SASSER. Well, you do consider this serious legislation?

Ambassador McHenry. It is serious legislation in that it is an appropriate first step and it is a significant first step. But more than that, I don't believe that Americans appreciate how much South Africans focus on what the United States does and says. These hearings are going to be followed very closely in South Africa. They won't get as much coverage in this country as they will get in South Africa.

CHANGE WILL COME SLOWLY

So, I think the fact that there is movement will help to counter the impression which is there now with regard to the constructive engagement and I think it will be a very significant morale booster and shot in the arm for the African population of that society. But it is not—and I don't think we should fool ourselves—change doesn't come overnight. We shouldn't delay things and I'm not suggesting that. One ought to move and move ahead, but it's going to take some time to work out that situation in South Africa and the pity is that they haven't started making the significant change down the road toward it.

Senator SASSER. Thank you, Mr. Ambassador.

Senator HEINZ. Senator Riegle.

Senator RIEGLE. If I may, I will add one other comment. First, I want to thank Senator Sarbanes for his very generous personal comment.

I want to touch once again on the standard of living question in broad economic terms.

The Carnegie report tells us—and Senator Sarbanes quoted from this earlier—that there are some 11 million black people in South Africa that live in the so-called homelands. The living condition in the homelands, as separate from the urban areas cited earlier as showing improvement, is starkly different. We might see in some narrow segment a somewhat gradually improving economic condition. In other areas, we are seeing, a very large number of people, a profoundly depressed kind of living situation. This standard is probably far below that in other societies even in that region of Africa.

Isn't that correct?

Ambassador McHENRY. Senator, the homelands situation is very bleak. It is bleak because people have in many instances, particularly those who have been removed from so-called white spots have been moved into areas which they were unfamiliar with, though there may have been some distant ancestral relationship. They have been moved into areas where it is very hard to make a living and they have been moved into areas where social and other facilities are very thin.

One shouldn't generalize about the situation there. One ought to talk about the rural areas and the urban areas and so forth. But with regard to the question which was raised earlier—that is comparing it with the situation in other parts of Africa—it is still irrelevant with regard to the situation in South Africa. The economic conditions of the living standards of all black South Africans are far below those of whites in the society, far below even the lowest rung of whites in the society as a whole.

Senator SARBANES. Would the Senator yield?

Senator RIEGLE. Yes; of course.

Senator SARBANES. It's really as irrelevant as saying to American blacks who may complain about their particular economic status in this country that they live better than blacks in African countries. It seems to me to have the same degree of irrelevancy with respect to material standard—let alone the other dimension that Senator Riegle added to his question, which I happen to think is fundamental.

Senator RIEGLE. Well, the propaganda—and I use that word—the sort of propaganda that is very carefully constructed to put a veneer of decency and positiveness on the Government of South Africa has to be stripped away. You have to take every one of these phony arguments when it's put up there. These arguments have to be taken apart right in the front window. If this is not done, there are a certain number of people who will buy these phony arguments. They will turn off that issue and they won't think about it any more.

Ambassador McHENRY. I fully agree with you, Senator, and anyone who's seen some of the literature supporting or justifying or rationalizing current policy would agree with you.

Senator RIEGLE. Well, thank you again very much for coming today.

Senator HEINZ. Ambassador McHenry, we thank you. You have been very eloquent and we appreciate your testimony. Thank you very much.

Ambassador McHENRY. Thank you very much.

Senator HEINZ. Our last panel consists of Mr. Reid Weedon, Mr. Sai Marzullo, Mr. George Schroll and Mr. Patrick O'Farrell. Gentlemen, would you please come forward, assuming you have not died of starvation yet.

Gentlemen, thank you for being here. Mr. Weedon, would you please begin.

STATEMENT OF D. REID WEEDON, JR., SENIOR VICE PRESIDENT, ARTHUR D. LITTLE, INC., EVALUATOR FOR SULLIVAN PRINCIPLES

Mr. WEEDON. Thank you, Mr. Chairman. It's a privilege to be here.

[The complete prepared statement follows:]

Testimony of D. Reid Weedon, Jr. to the Senate Banking Currency Committee, May 24, 1985.

I am D. Reid Weedon, Jr. of Winchester, MA, Sr. VP of Arthur D. Little, Inc.

In March of 1977, Dr. Leon H. Sullivan propounded what have come to be known as the Sullivan Principles for South Africa. In meeting with the chief executives of the twelve companies that became the original Signatories, Dr. Sullivan stated that it would be necessary that each company report to him annually on its activities in South Africa with respect to the Principles.

The number of Signatories grew rapidly to approximately 100 by mid-1978 when half of them submitted reports to Dr. Sullivan. At that time, he engaged Arthur D. Little to undertake the analysis of these progress reports on his behalf.

The whole process has developed substantially and an elaborate questionnaire has evolved for collecting annually information about the operations of the Signatory companies in South Africa.

The first three of the Sullivan Principles deal primarily with conditions in the workplace such as desegregation, equal pay for equal work and minimum wage. They are evaluated on a pass/fail basis so that it is possible for the employees themselves in South Africa to verify, on the basis of the grade we give to a company, the appropriateness of its responses.

For the last three Principles the companies' efforts and performance are evaluated with respect to support of training and advancement of employees, education generally, and community development, such as housing and assistance to Black businesses. A portion of these efforts are appropriately measured by financial contributions. These and certain other quantitative measures are subject to audit each year by the company's regular certified public accounting firm. Our own analysis and subsequent grading of each company are based upon this quantitative information as well as written descriptions of the company's activities and accomplishments related to the last three Principles. This analysis is, to a substantial extent, judgmental, making it very difficult to embody in law. Indeed I would not wish to undertake this evaluation in a legal rather than the present voluntary environment.

Several other codes for South Africa have been promulgated. Of these, only the European Economic Community code requires annual reporting. While the Sullivan Code has four times increased in scope and level of requirements, the EEC code has remained static. Furthermore, the reporting requirement is quite unimpressive compared to that of the Sullivan program.

One of the frequently raised issues is the accomplishments, if any, of the Sullivan Principles. In considering both the compliments and the brickbats aimed at the Principles, let us not forget that very likely, much of our sense of urgency here in the United States for change in South Africa stems from our own guilt complex and frustration in attempting to deal effectively with the minority situation in our own country. However, South Africa is a sovereign country, with its own Constitution, and we need to reflect on our own likely reactions if people of another country were to tell us the changes we should make in our Constitution. I do not mean to imply that we should ignore the situation in South Africa, but, rather, the absolute necessity for moving thoughtfully and constructively, remembering that the evil of apartheid will end only by vote of the White South Africans or by a revolution. I think it is important that all of us keep this thought in mind because while we may not like their definition of who is a citizen of their country, it is their country, not ours, and that fact limits what we can do and have been able to do.

The Sullivan Principles have accomplished many things in South Africa. Non-American companies in South Africa have told me that it has been necessary for them to change their own employment and social practices in order to keep American companies from hiring away their best employees. In their various industries, Signatory companies have been in the vanguard with respect to increasing minimum wages, recognition of non-white unions, training, and housing assistance. Although the Signatory companies employed less than one percent of Black workers in 1983, these employees held 15% of the 99-year land leases outstanding. This record was made possible as a result of financial aid and education about the value of home ownership. Since the start of the program, Signatories have contributed over 32 million dollars to improved health care and living conditions outside the workplace excluding education. Last year, they contributed toward the education of non-white, non-employees over $10 million. They also contributed the services of their employees to the extent of more than 110,000 man days.

The Signatories have also built a very fine secondary school in Soweto. It is not only the best school in South Africa, public or private, but very likely one of the best schools in the world.

Some people say that the Sullivan Principles do not go far enough, and a number of investors press the companies in which they are invested to go further. But going further may be contrary to what Black South Africans want. Lots of people in this country say that companies should divest - or dis-invest. I have great difficulty with this because I think the majority of the Black people in South Africa don't really want it. Indeed, Professor Lawrence Schlemmer, who is a professor of Sociology at the University of Natal, has just completed a survey and has found that the majority of the Black people in his sample are happy to have foreign investment in South Africa and realize that it produces many jobs and, therefore, helps a lot of people to eat. Over half recommend that foreign companies expand rather than withdraw; and 75% were against withdrawal according to that survey.

Our most recent annual report was published in October of 1984. In some instances it includes multiple grades for a Signatory company where the company reports on more than one operation in South Africa. Thirty-two received the highest grade, fifty-one others also received passing grades, and thirty-two received failing grades.

In order to be a Signatory, a company is required to make a nominal contribution to support the Sullivan administrative operation, including the reporting process, and to report each year.

Since last October, twenty-six new Signatories have enrolled, bringing the total America Signatories to one hundred and fifty of the approximately three hundred American companies known to have operations in South Africa. The median Signatory company size in South Africa is two hundred employees, the range being from 1 to about 5000 employees.

Last year the Signatories reported upon 65,000 employees or about one percent of the total economically active labor force in South Africa. The influence of the Signatory companies goes far beyond this one percent, however.

I sincerely believe that the Sullivan program is dynamic because it is a voluntary code and Dr. Sullivan is a tough taskmaster. The Signatory companies do have a strong positive effect in South Africa by setting the standards for business. But they alone will not be responsible for the elimination of apartheid. More participating companies will both improve conditions and bring more pressure on the government. My recommendation is that we should concentrate on urging the remaining American companies in South Africa to become Signatories as well as encouraging South African and other foreign companies in South Africa to join.

In my observation, economic boycotts and other foreign pressures short of war are not effective in bringing change within a country. Our two best levers to motivate change in South Africa are working within the internal economy through our companies there and supporting momentous improvement in the education of Blacks.

The ultimate objective of ending apartheid without disintegration of the country will come with equality of education. The Sullivan Signatories are making a large contribution to this objective but the need requires the support of many others. If we in the United States want to cause peaceful, meaningful change, we will offer to support massive educational aid to Blacks in South Africa. Our only condition should be that there is a single educational system for all the people of that country. We will need the help of many others such as Japan and Sweden who are outspoken against apartheid.

Senator HEINZ. Mr. Weedon, thank you.

Mr. Marzullo.

STATEMENT OF SAL MARZULLO, CHAIRMAN OF THE INDUSTRY SUPPORT UNIT FOR SULLIVAN PRINCIPLES, SPOKESMAN FOR SULLIVAN COS.

Mr. MARZULLO. Senator Heinz, Senator Proxmire, I appreciate the opportunity, along with some of my colleagues, to appear before you today, however briefly, to explain why we remain in South Africa and why we believe we are making a genuine contribution toward the change process developing in that country.

I think you will agree that it is doubtful whether there are many more emotional, contentious, and complex issues facing us today in the foreign policy area than those posed by the existence of apartheid in South Africa. Yet that very fact, it seems to me, requires us to look at all of the realities, both pleasant and unpleasant, that one must deal with in looking for rational solutions to achieve peaceful, effective, and genuine change in that society.

We are aware, of course, that there are many strategies for dealing with this issue and we do not question either the motivation or the goodwill of those who disagree with us. Yet we would like to suggest that our position is one that is not only equally moral and tenable, but a practical one as well. We seek to help change a society through our active involvement and presence, not to distance ourselves from the injustices that exist.

The utilization of our human, technical, and financial resources in South Africa is all aimed at bringing about peaceful change and racial equality in that country. We seek to work with all those in South Africa who strive for that equality: Government, business, academe, church, and other institutions. Our way to change is not easy and it is often frustrating, but it has produced measurable results. What we are doing is not the total answer to that country's problems and never will be. But it is an important part of the ultimate solution and those efforts have stimulated initiatives from other companies, European and South African, and have galvanized thinking on the need for change among other institutions in the country. I do not wish to overexaggerate what has been accomplished, but equally it would be wrong to underestimate or ignore both the practical results and the symbolic importance of the change process that has been set forth by the implementation of the Sullivan principles.

SOME EROSION THROUGH ECONOMIC GROWTH

Apartheid has been eroded by economic growth. The process of urbanization and industrialization has done more to doom traditional apartheid and separate development than any other single influence. If South Africa is to survive and prosper, we must build on that momentum and help to bring white and black South Africa together as one people, one nation. American companies have helped to accelerate reform and the Sullivan principles, far from being cosmetic, have been a useful vehicle for helping to build a climate for change—first in the workplace and later in the larger outside community. It has not been easy—it will not be easy in the future; but the changes are real and if apartheid has not yet been dismantled, its pillars have been hammered away and chipped at. It will ultimately fall. The growth of black trade unionism, for example, aided by U.S. companies, has provided one of the most fundamental changes to have taken place in South Africa so far. We should be seeking not to stop or impede the flow of this force for change, but to encourage it and provide incentives for it. Harry Oppenheimer, one of South Africa's leading industrialists and liberal spokesman—as a matter of fact, Senator Proxmire, he is one of the founders and bankers of the PFP, the leading opposition party—has written that punitive acts, however well intentioned, may compromise the successes of the past and be counterproductive.

The Sullivan principles are not perfect. We keep revising them and Dr. Sullivan, a deeply committed man who has given so much of his total energies to this task, prods and pushes us and proposes still more challenges, and I suspect he will continue to do so. South Africa is not the same country it was just 5 years ago, and never will be again. Whatever its problems, the Sullivan principles have helped to shape major changes in South African legislation and labor policy. Changes have come both from internal forces now operative in the South African ambience—primarily the economic forces of South Africa's economic development—and from moral pressure from American shareholders, churches, and others here in our own country. The responsible, concerned, caring pressure is welcome and has been productive. The simplistic sloganizing doesn't help very much.

We know, as you do, that the Sullivan principles alone are not a guaranteed method of providing quick and simple resolution of the injustices that exist in South African society. Only South Africans, all of them, will evolve the final solutions to their problems. But we must help them. In short, we strongly believe that our collective commitment to the Sullivan principles, properly coordinated and properly implemented, offers the possibility of making a greater contribution to change than does withdrawal. Again, I emphasize the vital importance not only of the changes but of their symbolic value. Our efforts are multiplied by those of leading South African businessmen and by South Africa's major employer groups who in January publicly committed themselves to a full and equal role for blacks in both the economic and political life of South Africa. These groups represent more than 80 percent of the employment strength of the country.

I might add here that since 1977, when 12 American signatory companies signed the original principles, we now total 152 companies. We have spent well over $100 million in health, education, community development, training, housing since 1978. More importantly, programs initially developed on a local level have now been developed for longer term results at both the regional and national levels in the fields of health, education, housing, and black entrepreneurship. We are making progress.

U.S. firms in South Africa are an antiapartheid force, a force for change, for bridge building and racial reconciliation. Our severest critic in the United States, Reverend Sullivan himself, has said while calling for a complete end to apartheid the following:

The principles are not an academic response designed to advance the views of those who are proponents of either investment or divestment. To the contrary, the principles are a pragmatic policy based upon the most judicious engagement of available resources, and are intended to improve the quality of life, to help bring justice to unliberated people, and to help build a peaceful, free South Africa for everyone.

We are at a critical juncture in South African history. Many white South Africans now understand that meaningful advance for the nonwhite population and their own long-term survival are not possible without fundamental structural reform of that society. We must work with these people to hasten the pace and to make those changes South Africans of all races desire. It would be ironic if at this critical point in South Africa's political history, when a government is beginning the process of fundamental change that we have all been calling for, that we who detest apartheid and all that it represents should make it impossible for those changes to take place peacefully.

The apartheid policies of South Africa are repugnant to all Americans. The debate, however, is not about defending apartheid, for it is indefensible. It destroys whites just as surely as it destroys blacks. The argument is about how best effectively to change South Africa's racial policies and on that strategy good and honest men may and do disagree.

In conclusion, Mr. Chairman, I would like to make the following points:

One, our only leverage to accomplish change in South Africa is in our presence. Withdrawal from South Africa would neither bring down the South African Government nor affect the policies of that Government.

Two, American firms, through adherence to voluntary standards of social responsibility, have been a leading force for evolutionary change away from apartheid. Mandatory, confrontational legislation would jeopardize that effort.

Three, divestment or curbing American investment would be against the wishes of a large number of South African blacks who see the role of U.S. business in their country as constructive and progressive.

Four, economic power is vital to the nonwhite community in South Africa. Investment, through jobs and training, provides that power. A well-educated and well-trained work force is the ultimate force causing the system to change.

Five, U.S. businesses should be encouraged to increase their role in the economy and their voluntary efforts to influence social change.

Six, to the extent that sanctions seek to govern the actions of South African affiliates of U.S. companies, they place these companies in an impossible situation between two authorities.

Seven, enactment of economic sanctions also would set a senseless precedent for subsequent legislation restricting U.S. business operations in any countries whose social policies might be objectionable. Not that this is the intent of the Senate, but all I'm saying is that I think we need to be very careful about how we put American business in a position where it is faced with competing authorities on an issue that's as delicate as this is. Certainly, we have every right as a country to protest infringements of human rights anywhere they exist.

I thank you again for your invitation.

[The complete prepared statement follows:]

STATEMENT OF
SAL G. MARZULLO, CHAIRMAN, INDUSTRY SUPPORT UNIT
ON BEHALF OF THE SULLIVAN SIGNATORY COMPANIES

Mr. Chairman, Members of the Subcommittee, my name is Sal Marzullo. I am Chairman of the Industry Support Unit, the industry group representing the now 152 American companies who are signators to the Sullivan Principles.

I appreciate the opportunity on their behalf to appear before you today, however, briefly, to explain why we remain in South Africa and why we believe we are making a genuine contribution toward the change process developing in South Africa.

It is doubtful whether there are many more emotional, contentious, and complex issues facing us today in the area of foreign affairs than those posed by the existence of apartheid in South Africa. Yet that very fact requires us to look at all the realities, pleasant and unpleasant, that one must deal with in looking for rational solutions to peaceful, effective and genuine change in that society.

We are aware, of course, that there are many strategies for dealing with this issue and we do not question either the motivation or the goodwill of those who disagree with us. Yet we would like to suggest that our position is one that is not only equally moral and tenable, but a practical one as well. We seek to help change a society through our active involvement and presence, not to distance ourselves from the injustices that exist.

The utilization of our human, technical and financial resources in South Africa is all aimed at bringing about peaceful change and racial equality in that country. We seek to work with all those in South Africa who strive for that equality: government, business, academe, church, and other institutions. Our way to change is not easy and it is often frustrating, but it has produced measurable results. What we are doing is not the total answer to that country's problems and never will be. But it is an important part of the ultimate solution and those efforts have stimulated initiatives from other companies, European and South African, and have galvanized thinking on the need for change among other institutions in the country. I do not wish to over-exaggerate what has been accomplished, but equally it would be wrong to underestimate or ignore both the practical results and the symbolic importance of the change process that has been set forth by the implementation of the Sullivan Principles.

Apartheid has been eroded by economic growth. The process of urbanization and industrialization has done more to doom traditional apartheid and separate development than any other single influence. If South Africa is to survive and prosper we must build on that momentum and help to bring white and black South Africa together as one people, one nation. American companies have helped to accelerate reform and the Sullivan Principles, far from being cosmetic, have been a useful vehicle for helping to build a climate for change--first in the work place and later in the larger outside community. It has not been easy--it will not be easy in the future; but the changes are real and if apartheid has not yet been dismantled, its pillars have been hammered away and chipped at--it will ultimately fall. The growth of black trade unionism, for example, aided by U.S. companies, has provided one of the most fundamental changes to have taken place in South Africa so far. We should be seeking, distinguished legislators, not to stop or impede the flow of this force for change, but to encourage it and provide incentives for it. Harry Oppenheimer, one of South Africa's leading industrialists and liberal spokesman, has written that punitive acts, however well intentioned, may compromise the successes of the past and be counterproductive.

The Sullivan Principles are not perfect. We keep revising them, and Dr. Sullivan, a deeply committed man who has given so much of his total energies to this task, prods and pushes us and proposes still more challenges. South Africa is not the same country it was just five years ago--and never will be again. Whatever its problems, the Sullivan Principles have helped to shape major changes in South African legislation and labor policy. Changes have come both from internal forces now operative in the South African ambience (primarily the economic forces of South Africa's economic development) and from moral pressure from American shareholders, churches, and others here in our own country. The responsible, concerned, caring, pressure is welcome. The simplistic, sloganizing helps no one.

We know, however, even as you do, that the Sullivan Principles alone are not a guaranteed method of providing quick and simple resolution of the injustices that exist in South African society. Only South Africans, all of them, will evolve the final solutions to their problems. But we must help them. In short, we strongly believe, that our collective commitment to the Sullivan Principles, properly coordinated and properly implemented, offer the possibility of making a greater contribution to change than does withdrawal. Again, I emphasize the vital importance not only of the changes but of their symbolic value. Our efforts are multiplied by those of leading South African businessmen and by South Africa's major employer groups who in January publicly committed themselves to a full and equal role for blacks in both the economic and political life of South Africa. These groups represent more than 80% of the employment strength of the country.

I might add here that since 1977, when 12 American signatory companies signed the original Principles, we now total 152 companies. We have spent well over one hundred million dollars in health, education, community development, training, housing since 1978. More importantly, programs initially developed on a local level have now been developed for longer-term results at both the regional and national levels in the fields of health, education, housing and black entrepreneurship. We are making progress.

U.S. firms in South Africa are an anti-apartheid force, a force for change, for bridge building and racial reconciliation. Our severest critic in the United States, Rev. Sullivan himself, has said while calling for a complete end to apartheid, the following: "The Principles are not an academic response designed to advance the views of those who are proponents of either investment or divestment. To the contrary, the Principles are a pragmatic policy based upon the most judicious engagement of available resources, and are intended to improve the quality of life, to help bring justice to unliberated people, and to help build a peaceful, free South Africa for everyone."

We are at a critical juncture in South African history. Many white South Africans now understand that meaningful advance for the non-white population and their own long-term survival is not possible without fundamental structural reform. We must work with these people to hasten the pace and to make those changes South Africans of all races desire. It would be ironic if at this critical poiht in South Africa's political history, when a Government is beginning the process of fundamental change that we have all been calling for, that we who detest apartheid and all that it represents, should make it impossible for those changes to take place peacefully.

The apartheid policies of South Africa are repugnant to all Americans. The debate however is not about defending apartheid, for it is indefensible. It is about how best effectively to change South Africa's racial policies and on that strategy good and honest men may and do disagree.

In conclusion, Mr. Chairman, gentlemen, I would like to make the following points:

1. Our only leverage to exercise change in South Africa is in our presence--withdrawal from South Africa would neither bring down the South African Government nor affect the policies of that Government.

2. American firms, through adherence to voluntary standards of social responsibility, have been a leading force for evolutionary change away from apartheid. Mandatory, confrontational, legislation would jeopardize that effort.

3. Divestment or curbing American investment would be against the wishes of a large number of South African blacks who see the role of U.S. business in their country as constructive and progressive.

4. Economic power is vital to the non-white community in South Africa. Investment, through jobs and training, provides that power. A well-educated and well-trained work force is the ultimate force causing the system to change.

5. U.S. businesses should be encouraged to increase their role in the economy and their voluntary efforts to influence social change.

6. To the extend that sanctions seek to govern the actions of South African affiliates of U.S. companies, they place these companies in an impossible situation between two authorities.

7. Enactment of economic sanctions also would set a senseless precedent for subsequent legislation restricting U.S. business operations in any countries whose social policies might be objectionable.

Once again, thank you for your invitation to appear before this Subcommittee.

SGM:mpl

Senator PROXMIRE. Thank you very much, Mr. Marzullo. The chairman had to leave. He had to go to the White House for a meeting and he apologizes, but I would be delighted to listen to you gentlemen and then question you.

Mr. Schroll, you have a 2½-page statement. If you gentlemen can abbreviate in any way we would be very grateful. The hour is getting late. Go right ahead, sir.

STATEMENT OF GEORGE J. SCHROLL, CHAIRMAN, EDUCATION TASK GROUP OF THE SULLIVAN SIGNATORY COS.

MR. CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE,
GOOD MORNING!

My name is George Schroll and since 1977 I have been a member of the Industry Support Unit ofthe Sullivan Principles and for the past three years have served as Chairman of the Education Task Group for the Principles.

I want to thank you for the opportunity of appearing before you today.Like others, I am here today to present information in support of the value of the continued presence of American Corporations in South Africa to bring about the end of apartheid. At the outset, I believe it is important to correct some erroneous impressions which have been given fairly wide circulation. The first of these is that the presence of American based corporations in South Africa in some manner supports the system of apartheid. Nothing could be further from the truth. Each company which endorsed the Sullivan Principles, has made a commitment to work toward the elimination of that system. Signatories recognize that the whole concept of racial separation and discrimination which forms the basis of apartheid is not only morally wrong but economically bankrupt.

The notion that apartheid makes the conduct of business easier or more profitable is also incorrect. Elements of the apartheid system such as influx control, reduce the mobility of non-white employees. Many hours of management time are devoted to securing residential rights in urban areas for employees. Regulations controlling the areas where employees may reside necessitate the adjustment of shifts to match the availability of limited transportation to the townships where black workers are forced to reside. The separate and inferior eduction system provided for blacks makes it necessary for companies to supply supplemental education at the work place far in excess of the needs in other areas of the world. Negotiations with unions are more complex due to the intermingling of political and work related matters, resulting from the fact that union membership currently provides the only area where the black man has a voice in determining those things which impact on his life. Responding to enquiries from church groups, universities and share holders on the corporate presence in South Africa imposes a work load far greater than that resulting from a presence in any other country in the world. All of this is unique to South African operations.

For the vast majority of the Signatory Companies to the Sullivan Principles, disinvestment of their South African operations would be disruptive but would not have a crippling impact on the organizations' continuing existence.

Thus when there is a threat of sanctions it must be remembered we are dealing with a delicate situation.

If it is true that doing business in South Africa today is more complex than in many other countries, and if the volume of business and the profitability are such that disinvestment would not have a crippling impact, why then do we, the Signatory Companies, oppose legislation designed to apply pressure for disinvestment? There are a number of reasons for this but foremost amongst them is that it is our belief that our presence permits us to continually take actions which erode apartheid and accelerate evolutionary change. We do not believe that the activities of the American Companies of, and by themselves, can cause the downfall of apartheid but we can, and do, continually wear away the foundations of this sytem, and as Dr. Sullivan has often said, "We serve as a catalyst for change". Please understand I am not trying to paint the multinational organizations which comprise the Signatory Companies as solely altruistic. The free South Africa which will inevitably evolve, with all racial groups participating in the political and economical system, will be a stable, wealthy nation with the most developed infrastructure in all of Africa well into the foreseeable future. For all of these reasons, we are sincerely motivated to continue our operations and contribute to accelerating the economic, social and political changes which will put an end to apartheid and bring about a more equitable society for all the people of South Africa.

If asked whether the efforts of the Signatory Companies have been responsible for any changes which have taken place in South Africa over the past seven years, the answer would have to be a definite yes. The Wiehan Committee studies which led to legislation enabling the formation of black unions were due in a very large part to the adoption of the Sullivan Principles by American Companies. The granting of 99 year leaseholds to blacks, which gave defacto recognition of their right to reside permanently in the urban areas was also due in a large measure to efforts of the Sullivan Companies and this of course was a serious erosion of one of the basic tenets of apartheid. Beyond this, the Sullivan Principles led to the development of similar codes and initiatives by European and South African companies adding to the growing pressures for meaningful change.

It must be re-emphasized that apartheid is equally repugnant to the Signatory Companies as it is to those critical of the presence of American business in South Africa. Where we differ with these critics is in the means by which it is to be ended. We believe that by increasing the efforts which have been applied over the past eight years much more can be achieved.

By contrast, the advocates of disinvestment believe that withdrawal by the American Companies would bring about an economic crisis which in turn would lead the government to a rapid dismantling of apartheid. While this sounds like an attractive result, there is little reason to believe that it would take place. The economic dislocation caused by American withdrawal would not be large and the slack thus created would be taken up by local and foreign investors less committed to racial equality than the American companies they would be replacing. One sure effect of a American withdrawal would be the threat to the employment of 120,000 blacks who have been trained and developed by American companies, as they desegregated the workplace over the past decade.

Supporting this contention is the opposition to disinvestment expressed by both the National African Chamber of Commerce and Industry as well as the Federation of South African Trade Unions which currently has an estimated membership of 130,000 and is the most active organizer of black labor in that country. In attacking the policy of disinvestment, the National African Chamber of Commerce and industry equated economic growth as being "a powerful catalyst in the process of peaceful, social and political reform in the country".

Economic growth has also been one of the major factors in eliminating apartheid in the workplace. As industry expanded more and more positions were opened to blacks and economic pressures joined with political change to bring about the end of job reservation for whites. These same pressures led to greater urbanization and as mentioned earlier blacks living in the urban areas are now recognized as permanent residents rather than sojourners who would eventually return to their rural homelands.

On a visit to South Africa in April, I heard South Africans of all ethnic groups express the realization that the country is on the threshold of meaningful reform. The announced abolition of the Mixed Marriages and Immorality Acts signified the elimination of one of the pillars of the concept of separate development. The national party has announced the intention of opening of urban centers to black enterprise and mention has been made of retention of South African citizenship by those blacks residing in the homelands. Much remains to be done but the stirrings of change are to be seen everywhere.

In summary this is not the time to advocate the withdrawal of American investments in South Africa. Rather it is the time to accelerate the voluntary efforts of the signatory companies. Recognizing this the signatory companies overwhelmingly endorsed Dr. Sullivan's 4th Amplification of the principles and have promised to actively pursue legislative change to end all aspects of apartheid. Let the Signatory Companies continue with renewed efforts, the work we began eight years ago.

Thank you for your attention and the opportunity to appear before this sub committee.

Senator PROXMIRE. Thank you very much, Mr. Schroll.

Mr. O'Farrell, I would be delighted to put in the record the statement by the AFL-CIO Executive Council on South Africa made at Bal Harbour, FL, the statement of the ICFTU on apartheid in South Africa of April 13, 1985; the statement of the AFL-CIO Executive Council on South Africa of May 7, and I think that's about it. Go right ahead and, again, I would appreciate it if you could abbreviate your statement. It's an excellent statement, but the hour is getting late.

STATEMENT OF PATRICK O'FARRELL, EXECUTIVE DIRECTOR, AFL-CIO, AFRICAN-AMERICAN LABOR CENTER

Mr. O'FARRELL. Senator, I thank you very much and I will try to abide by your admonition, but I suppose I feel a little bit like the anchorman at the graduation ceremony at Annapolis yesterday, and I think I would be remiss in my purpose for being here this morning if after looking at some of the other testimony, particularly being the odd man out on this panel, if I didn't take just a little bit of your time and I hope you will indulge me for a few minutes.

Senator PROXMIRE. Fine. I hope you will.

Mr. O'FARRELL. Thank you.

Mr. Chairman, I welcome this opportunity to present the views of the AFL-CIO on the legislation that has been proposed to express the opposition of the American people to the odious system of apartheid in South Africa and to hasten its dismantlement.

AMERICAN LABOR MOVEMENT INVOLVEMENT

The American labor movement has a long history of involvement in the struggle for freedom in Africa. Among the free trade union movements of the world, we took the lead in opposing colonialism and demanding independence for the African nations.

We cite this history not to blow our own horn but to establish the roots of our commitment to the struggle against racism and exploitation on the African Continent. Our efforts against apartheid are but an extension of that historic commitment.

Those efforts have not been merely rhetorical. If rhetoric were sufficient to undermine apartheid, it would long ago have collapsed under the weight of denunciatory resolutions, statements, and speeches emanating from countless international forums. The AFL-CIO has undertaken active programs of assistance to those who seek trade union and human rights in South Africa and the abolition of the apartheid system.

The moral isolation of Pretoria from the world community could hardly be more complete. Yet, the system of apartheid has survived essentially unchanged.

What has changed in South Africa and what we believe holds the greatest promise for the ultimate elimination of apartheid through peaceful means is the emergence of the black trade union movement.

In South Africa, as elsewhere, the ability of people to organize and control their own institutions—that is, to effectively exercise freedom of association—is the best alternative to the bloody resolution of conflict, and if violent revolution comes to South Africa, there will be no winners, only unimaginable suffering.

It is for this reason that the AFL-CIO several years ago adopted a program of action in support of black trade unions in South Africa, aimed at providing direct assistance for trade union education, leadership training, and exchange programs. These programs are designed to meet the needs of black trade unions inside South Africa as they define those needs.

To better ascertain those needs, the AFL-CIO, last January, in conjunction with its African-American Labor Center and the A. Philip Randolph Education Fund, sponsored a conference that brought together 10 black trade union leaders from South Africa, including Cusa and Fosatu, and more than 300 American trade union leaders. At this conference there was a wide-ranging discussion of the views of our South African brothers and sisters with regard to the current situation in their country and the efficacy of various proposals to bring about the end of apartheid.

This discussion laid the basis for the comprehensive statement issued by the AFL-CIO Executive Council at its February meeting, which you have already entered in the record.

The ICFTU represents 141 national trade union organizations in 98 countries around the free world, with a combined membership of more than 82 million workers. The AFL-CIO has worked closely with the ICFTU in its campaign against apartheid, recognizing that the black trade union movement of South Africa requires the coordinated support of all of the world's free trade unions.

We were pleased that the ICFTU set aside a special session at its meeting of the executive board in Washington, DC, in April for a discussion of the South African crisis. This session produced a statement which is appended to this testimony in the belief that the Congress would attach considerable importance to the views of this prestigious worldwide organization.

The statement, in which the AFL-CIO wholly concurred and which was approved by the leadership of South Africa's independent black trade union movement which was represented at the meeting, and included representatives of Cusa and Fusatu, urges a tough sanctions policy toward South Africa. These proposed sanctions are detailed in very specific, concrete terms and you have already agreed to enter the statement of the ICFTU into the record.

Since some of the other witnesses would say that they talked only for themselves, I would like to say that in this context we are speaking for not only the members of the trade union movement, the 15 million members of the AFL-CIO, but we are also bringing to you the statements and the record of concern of the 82 million members of the International Federation of Free Trade Unions and we have been asked to do that by the leadership of that organization.

The statement of the ICFTU and the measures that they call for are very much in keeping with the intent, the spirit, and the actions spelled out in S. 635. In this connection, Mr. Chairman, I would like to bring to your attention a resolution on disinvestment adopted by the Council of Unions of South Africa and conveyed to us by the general secretary of that organization, Mr. Phiroshaw Camay. A copy of that statement is attached to my testimony but I would like to indulge the members of the committee for a few extra minutes by reading it. It's very brief and I would like to read it to you at this time since it reflects the viewpoint of the largest black trade union organization in South Africa which also contains the largest black union, the National Union of Mine Workers, and we think reflects the majority opinion of the black workers of South Africa.

WORKERS RESOLUTION

The resolution reads as follows, Senator:

> Reaffirming the resolutions at the Joint Executive Council, knowing that racial oppression through the apartheid system has been declared by the United Nations as a crime against humanity, concluding that investment in South Africa therefore supports and perpetuates racial discrimination, this National Executive Committee therefore concludes that:
>
> Any investment in South Africa is therefore investment in apartheid.
>
> There should be no new investment in South Africa whilst apartheid still exists.
>
> The sale of krugerrands in other countries should be prevented by trade unions in those countries.
>
> There should be no defense, computer or nuclear technology sold to the South African white government.
>
> There should be no new investment in homeland areas which exploit the racial laws.

I submit, Senator, that this statement by the largest black trade union organization of South Africa is consonant with the intent and the position outlined in S. 635.

Senator PROXMIRE. It's an excellent summary. It's precisely what S. 635 provides.

Mr. O'FARRELL. And I would say, Senator, that was adopted before S. 635 was even known to them. The date on the statement is August 12, 1984.

We in the AFL-CIO are concerned about the failure of those bills which we have examined to address the urgency of pressing for the abolition of the so-called preventive detention laws that are used to harass, intimidate, and imprison labor leaders and others without trial. These laws, as the AFL-CIO Executive Council has pointed out, "in effect, nullify much of whatever benefit accrued from previous legislation recognizing the trade union rights of black workers."

The most recent example of the use of the law by South African authorities is the death of black labor leader Andries Raditsela while in police custody. A copy of a telegram from AFL-CIO President Lane Kirkland to South African President P.W. Botha expressing the AFL-CIO Executive Council's outrage at this tragedy is attached to this testimony.

It is not enough to bring external pressure to bear on the South African Government. We recognize that change must come from within. But such change will not come unless the democratic forces within South Africa—preeminently the black trade union movement—are able to organize and effectively represent the will of the majority.

It is therefore imperative that we do all that we can to remove the coercive impediments to their exercise of freedom of association. Measures by the Congress aimed at eliminating the preventive detention laws would be a powerful encouragement to those who are fighting on the front lines of freedom in South Africa, and we urge the Congress to include such measures in the antiapartheid legislation pending before it.

In a larger sense, we are troubled by the fact that the modest sanctions proposed in S. 635 could be avoided for several years while some of the most objectionable and inhumane features of the apartheid system are maintained in place.

The South African Government must not be led to believe that it can escape the full effect of sanctions by piecemeal measures that stretch out for years the complete elimination of the apartheid system.

The International Confederation of Free Trade Unions will meet again in June of this year in Geneva with our delegates from the South African trade union movement in order to begin the selection of companies to be boycotted or sanctioned by the international trade union movement on a selective basis. The companies to be chosen for that will be presented to us by the trade unionists from inside South Africa and they will be those companies that are not moving toward the abolition of apartheid. These will not only be American companies. This is a worldwide operation to include companies from other countries, and to be participated in to the extent possible by all of the trade unions of the free world.

Mr. Chairman, we urge the immediate passage of legislation that includes the sanctions proposed by the AFL-CIO and their maintenance until the apartheid system is dismantled.

Therefore, we recommend to this committee the urgent passage of S. 635.

Thank you very much.

[The complete prepared statement follows:]

STATEMENT OF PATRICK J. O'FARRELL, EXECUTIVE DIRECTOR AFRICAN-AMERICAN LABOR CENTER (AFL-CIO) BEFORE THE SENATE BANKING, HOUSING AND URBAN AFFAIRS COMMITTEE ON S635 AND OTHER PENDING SOUTH AFRICA LEGISLATION

MAY 24, 1985

Mr. Chairman, I welcome this opportunity to present the views of the AFL-CIO on the legislation that has been proposed to express the opposition of the American people to the odious system of apartheid in South Africa and to hasten its dismantlement.

The American labor movement has a long history of involvement in the struggle for freedom in Africa. Among the free trade union movements of the world, we took the lead in opposing colonialism and demanding independence for the African nations.

We cite this history not to toot our own horn but to establish the roots of our commitment to the struggle against racism and exploitation on the African continent. Our efforts against apartheid are but an extension of that historic commitment.

Those efforts have not been merely rhetorical. If rhetoric were sufficient to undermine apartheid, it would long ago have collapsed under the weight of denunciatory resolutions, statements, and speeches emanating from countless international forums. The AFL-CIO has undertaken active programs of assistance to those who seek trade union and human rights in South Africa and the abolition of the Apartheid system.

The moral isolation of Pretoria from the world community could hardly be more complete. Yet the system of apartheid has survived fundamentally unchanged.

What has changed in South Africa—and what we believe holds the greatest promise for the ultimate elimination of apartheid through peaceful means—is the emergence of the black trade union movement.

In South Africa, as elsewhere, the ability of people to organize and control their own institutions—that is, to effectively exercise freedom of association—is the best alternative to the bloody resolution of conflict, and if violent revolution comes to South Africa, there will be no winners, only unimaginable suffering.

It is for this reason that the AFL-CIO several years ago adopted a Program of Action in Support of Black Trade Unions in South Africa, aimed at providing direct assistance for trade union education, leadership training, and exchange programs. These programs are designed to meet the needs of black trade unions as they define those needs.

To better ascertain those needs, the AFL-CIO, last January, in conjunction with its African-American Labor Center and the A. Philip Randolph Education Fund, sponsored a conference that brought together black trade union leaders from South Africa and more than 300 American trade union leaders. At this conference, there was a wide-ranging discussion of the views of our South African brothers and sisters with regard to the current situation in their country and the efficacy of various proposals to bring about the end of apartheid.

This discussion laid the basis for the comprehensive statement issued by the AFL-CIO Executive Council at its February meeting. A copy of this statement is attached to this testimony. I would particularly draw your attention to the Council's conclusion that:

> "The Reagan Administration's policy of 'constructive engagement' has not produced significant results. Indeed, Pretoria apparently views its good relations with the Administration as a license to delay indefinitely the dismantling of the odious apartheid system."

To which I would add, Mr. Chairman, that Pretoria can only be encouraged in this view by the insensitive statements made by the President of the United States about the killing of innocent people in Uitenhage by the South African police. These statements were deplored by the Executive Board of the International Confederation of Free Trade Unions at its meeting in Washington last month, and we join the ICFTU in calling on the President to withdraw his harmful remarks.

The ICFTU represents 141 unions in 98 countries with a combined membership of more than 82 million workers. The AFL-CIO has worked closely with the ICFTU in its campaign against apartheid, recognizing that the black trade union movement of South Africa requires the coordinated support of all of the world's free trade unions.

We were pleased that the ICFTU set aside a special session at its Washington meeting for a discussion of the South African crisis. This session produced a statement which is appended to this testimony in the belief that the Congress would attach considerable importance to the views of this prestigious organization.

The statement, in which the AFL-CIO wholly concurred and which was approved by the leadership of South Africa's independent black trade union movement which was represented at the meeting, urges a tough sanctions policy toward South Africa. These proposed sanctions are detailed in very specific, concrete terms and in our view would, if implemented, bring substantial pressure to bear on the South African government to change its racist policies. Time does not permit me to list the measures called for by the ICFTU, but I hope that they will be studied by the Congress.

They are very much in keeping with the intent, the spirit and the actions spelled out in S635. In this connection, Mr. Chairman, I would like to bring to your attention, a resolution on disinvestment adopted by the Council of Unions of South Africa and conveyed to us on May 6 by the General Secretary of that organization, Mr. Phiroshaw Camay. The resolution, a copy of which is attached to my testimony, asserts that "any investment in South Africa is .... investment in apartheid"; that "there should be no new investment in South Africa"; and that "there should be no investment in homeland areas which exploit the racial laws."

Mr. Chairman, the AFL-CIO commends the authors and sponsors of this legislation and will support enactment of those proposals that are consonant with the statements of the AFL-CIO Executive Council and the ICFTU.

In this regard, I call to your attention the statement of the AFL-CIO Executive Council of May 7, 1985, a copy of which is attached to this testimony. The statement calls for our government and the other industrial democracies to take the following steps:

- ban new investment in South Africa;
- end all investment guarantees, export credits and trade promotion with South Africa;
- stop new IMF loans as well as other bank loans to the South African state and publicly-owned companies;
- halt the sales of Kruggerands and the purchase of South African coal;

- punish violators of the U.N. oil embargo against South Africa;
- embargo the sale of arms to South Africa, especially those used by its military, security and police forces;
- compel disinvestment by multinational companies in the energy and high-technology sectors;
- force disinvestment by all multinational companies that have been identified by the independent black trade union movement as being in violation of internationally accepted labor standards.

We are concerned about the failure of those bills which we have examined to address the urgency of pressing for the abolition of the so-called Preventive Detention laws that are used to harass, intimidate and imprison labor leaders and others without trial. These laws, as the AFL-CIO Executive Council has pointed out, "in effect, nullify much of whatever benefit accrued from previous legislation recognizing the trade union rights of black workers."

The most recent example of the use of the "law" by South African authorities is the death of black labor leader Andries Raditsela while in police custody. A copy of a telegram from AFL-CIO President Lane Kirkland to South African President P.W. Botha expressing the AFL-CIO Executive Council's outrage at this tragedy is attached to this testimony.

It is not enough to bring external pressure to bear on the South African government. Change must come from within. But such change will not come unless the democratic forces within South Africa—preeminently the black trade union movement— are able to organize and effectively represent the will of the majority.

It is therefore imperative that we do all that we can to remove the coercive impediments to their exercise of freedom of association. Measures by the Congress aimed at eliminating the Preventive Detention laws would be a powerful encouragement to those who are fighting on the front lines of freedom in South Africa, and we urge the Congress to include such measures in the anti-apartheid legislation pending before it.

There are currently 21 black trade unionists in jail who have been held under the Preventive Detention laws, without charges or trial, some for more than 6 months, and we are attaching a list of these trade union prisoners to this testimony with the request, Mr. Chairman, that at a minimum, this Committee urge the Administration to demand their release.

In a larger sense, we are troubled by the fact that the modest sanctions proposed in S635 could be avoided for several years while some of the most objectionable and inhumane features of the apartheid system are maintained in place.

The government of South Africa must not be led to believe that it can escape the full effect of sanctions by piecemeal measures that stretch out for years the complete elimination of the apartheid system.

Mr. Chairman, we urge the passage of legislation that includes the sanctions proposed by the AFL-CIO and their maintenance until the apartheid system is dismantled.

Mr. Chairman, on a related matter, the AFL-CIO has also proposed that the International Labor Organization consider establishing documentation and research machinery to monitor the conduct of all corporations operating in South Africa, with regard to their recognition of black trade union rights, the training and upgrading of black workers, and their observance of universal labor standards. Some indication or instruction from the Committee to the U.S. government representatives to the ILO to urge the ILO to use its machinery in the fight against apartheid would be a positive step.

Thank you.

Statement by the AFL-CIO Executive Council

on

South Africa

February 19, 1985
Bal Harbour, FL

Apartheid is a moral affront to civilized humanity. But despite the condemnations of an outraged world opinion, the South African government continues to resist the demands of its black citizens for an end to institutionalized racism and for full and equal participation in the political life of the nation.

The AFL-CIO is committed to cooperation with those forces in South Africa that seek an end to apartheid through peaceful, democratic means. The alternative is a violent revolutionary upheaval that would bring immeasurable suffering to all elements of South African society.

We appreciate the contributions of the many individuals who, because of their outspoken opposition to apartheid, have been driven into exile or prison. But it is to those inside South Africa, fighting on the front lines, that we look for leadership in the eradication of apartheid, which cannot be sustained if peace and stability are to be achieved in Southern Africa.

We have been especially encouraged by the emergence in recent years of the black trade union movement in South Africa. Freedom of association is the foundation of democratic institution-building and offers the most promising hope for peaceful social change.

The AFL-CIO will, therefore, continue to respond to requests for assistance through its Program of Action in Support of Black Trade Unions in South Africa and through the ongoing programs of the African-American Labor Center.

Our assistance will be guided by the same principle that has governed our aid to the workers of Poland, El Salvador and every other country where our help has been requested -- namely, that we will respond to the expressed needs and wishes of our brothers and sisters who are under the gun.

The AFL-CIO calls upon the other free labor movements of the world -- and especially those in the industrialized nations that trade with South Africa -- to urge their governments to press South Africa for an end to the Preventive Detention laws that are used to harass, intimidate and imprison labor leaders and others without trial. These laws, in effect, nullify much of whatever benefit accrued from previous legislation recognizing the trade union rights of black workers.

The AFL-CIO will continue to contribute to the multilateral program of assistance to black trade unions directed by the International Confederation of Free Trade Unions and to participate in the union-to-union programs of the International Trade Secretariats.

In addition, we call upon the International Labor Organization to investigate the appalling conditions of black labor in South Africa including the forced removal of black workers to Bantustans. Toward this end, the ILO should consider setting up a commission of inquiry comparable to the commissions it established in the cases of Poland, Chile and other countries.

The ILO should also consider creating documentation and research machinery to monitor the conduct of all corporations operating in South Africa, with regard to their recognition of black trade union rights, the training and upgrading of black workers, and their observance of universal labor standards.

Companies that fail in their social responsibilities should be targeted for disinvestment, boycotts, adverse publicity campaigns and other appropriate measures. In considering whether and when to apply such measures, the AFL-CIO will be guided by the wishes of the black trade union movement of South Africa.

The Reagan Administration's policy of "constructive engagement" has not produced significant results. Indeed, Pretoria apparently views its good relations with the Administration as a license to delay indefinitely the dismantling of the odious apartheid system. But apartheid cannot be maintained indefinitely. The real issue is whether it will be abolished peacefully or violently. The longer South Africa resists peaceful change, the more it invites the bloody alternative.

INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS

EXECUTIVE BOARD

Washington, 11 - 13 April 1985

RESOLUTION

The ICFTU Executive Board at its 87th meeting, held in Washington on 11-12 April 1985:

CONDEMNS all collaboration with the South African regime serving in any way to strengthen or maintain apartheid;

STRESSES that all so-called constructive engagement policies and political exchanges, such as visits to Heads of Government by South Africa's President, constitute such collaboration providing considerable support to the regime;

DEPLORES the insensitive statements by the President of the United States in regard to the killing of innocent people in Uitenhage by the South African police, and calls on the President to withdraw his remarks;

FURTHER CALLS on the US Government and all other governments to embark on a vigorous policy of constructive disengagement, on the lines proposed by the statement adopted by the 87th meeting of the ICFTU Executive Board.

BEATING APARTHEID

(Statement adopted by the ICFTU Executive Board
at a Special Session held in Washington, D.C.,
11 April 1985)

Introduction

1. The situation in South Africa is at crisis point. The political and economic foundations of the apartheid regime are under attack as never before. Repression of black leaders is intensifying, the hated influx control measures are being tightened, and clashes between the black community and security forces occur daily. The regime is desperately trying to change the image, although not the reality, of apartheid both in South Africa and abroad. Business leaders in countries with extensive economic links to South Africa are beginning to reassess their ties with apartheid. This is due to the pressure of public opinion in their own countries, to growing doubts about the future return on their investments and increasingly effective opposition to apartheid in South Africa. Yet Conservative political leaders have yet to react to these realities. Now is the time to step up the international pressure against apartheid by governmental and further trade union action.

2. The ICFTU and its affiliates are proud to be in the forefront of the campaign against apartheid. We welcome the recent upsurge in international awareness of the evil nature of apartheid which is in part due to the campaigning work of the free trade unions over many years. In the fight against apartheid, the ICFTU's distinctive contribution is the emphasis on assisting the development of a strong independent black trade union movement in South Africa. The key importance of democratic trade union organizations in the freedom struggle is now apparent to all. As was stated in the recently updated ICFTU Programme of Action, the growth and strengthening of the independent black trade union movement, is the single most effective measure for the repressed majority in South Africa to gain freedom and justice and to abolish apartheid. This conviction will continue to be at the centre of the ICFTU campaign against apartheid. Apartheid is an entrenched system of racial discrimination and economic exploitation which is based on a number of key pieces of legislation, backed up by the administrative powers of the government. Ending apartheid means majority rule in an undivided society.

3. The existence of the South Africa regime depends on apartheid. It will not end it. Diplomacy has failed to get across the abhorrence felt by people all over the world against the repression of the black majority. The ICFTU is therefore convinced

that governments must firmly commit themselves to escalating political pressure on and applying sanctions against South Africa. As a matter of urgency all governments and especially those of the main trading and investment partners of South Africa should increase and implement the range of measures so long threatened by the United Nations.

Sanctions

4. Support for a tough sanctions policy is growing as public awareness of the continued repression and injustice suffered by the black majority in South Africa has increased. The threat of economic isolation is a major concern for the apartheid regime, but must be made more credible by specific commitments to effective action by the large industrialised countries.

5. The ICFTU proposes sanctions which should begin with the tightening of the UN arms embargo and proceed further. In cooperation with the UN, all governments should develop immediate effective machinery for the implementation and monitoring of an international sanctions policy.

6. Governments should by administrative and legislative action build up the following sanctions:

i. The extension of the arms embargo to include sales by South African subsidiaries of transnational corporations, a tightening of the definition of arms sales to include all types of equipment intended for use by South Africa's military, security and police services, sales of machinery to South African arms-producing companies, the purchase of South African produced arms and the strengthening of international monitoring to ensure compliance by all major industrial countries.

ii. The ending of investment guarantees, export credits and all trade promotion measures, and steps, product by product, to switch both import and export trade from South Africa.

iii. Prevention of new investment in South Africa by transnationals.

iv. The ending of all contracts for the expansion of the South African nuclear energy and oil from coal programmes.

v. The ending of all commercial operations by transnationals in the so-called "homelands" or "Bantustans"

vi. A stop on bank loans to the South African State and publicly-owned companies, and new IMF loans.

vii. Punitive action against the owners of any ships which carry oil to South Africa and against oil companies or oil traders which break or are party to the breaking of the UN oil embargo. This will entail intensified national and international monitoring by governments of shipping traffic to South Africa.

viii. A ban on sale of Kruger [illegible]

ix. A ban on purchases of South African coal.

x. A programme of compulsory disinvestment by transnationals operating especially in the armaments, energy, high-technology sectors in South Africa, and including all those companies which have been identified by the independent black trade union movement as being in violation of internationally accepted standards of labour practice.

7. These measures should culminate in the adoption of mandatory UN sanctions to enforce the economic isolation of South Africa.

Emigration and cultural contacts

8. Linked to sanctions on trade, investment and other commercial links, governments of the countries of origin of white emigrants to South Africa, should take immediate steps to warn their citizens of the reality of apartheid. Governments should also take steps to:

i. Close all official and unofficial South African recruitment offices and tourist promotion offices;

ii. Ensure that no public employment agencies handle job vacancies in South Africa; and

iii. Actively discourage the advertising of South African job vacancies;

iv. Vigorously discourage sports and cultural contacts with South Africa.

9. The ICFTU and its affiliates will also undertake a coordinated information campaign in support of measures to discourage white emigration through trade union action targeted on individual countries in turn (UK, USA, West Germany, the Netherlands, Portugal, Greece, Australia and Belgium) and at multinationals or South African companies which recruit white labour for South Africa.

Government collaboration with the South African regime

10. Special note should be taken of the collaboration between the South African government and other governments. The ICFTU believes that the present racist government of South Africa should be isolated and that visits by exponents of apartheid should never be entertained by any country.

Targeting transnational corporations

11. At the same time as working for governmental action against apartheid, the ICFTU, the ITS and their affiliates will also increase pressure on transnational corporations operating in South Africa and on South African multinationals with operations outside that country. Such transnationals are pivotal to economic relations with South Africa. They are directly affected by changes in South Africa and by efforts outside the country to increase pressure on the regime. Both individually and collectively transnational corporations have a major influence on the future of apartheid and their vulnerability to international trade union pressure should be exploited.

12. The ICFTU firmly believes that measures must be taken to reduce links with South Africa. The ICFTU calls on all TNCs operating in South Africa to co-operate fully with the international effort to step up economic pressure on the apartheid regime. In addition, and within the framework of the ICFTU's policy on sanctions and disinvestment, the ICFTU, the ITS and national affiliates will work in consultation with the independent black trade union movement to further their demands vis-a-vis particular companies. These campaigns will be targeted at individual companies, including South African TNCs with operations outside that country, and will involve, among others, the following activities:

i. Approaches to management by unions in a company's home country in support of demands for full collective bargaining rights by independent black trade unions in South African subsidiaries;

ii. Meetings between representatives from the South African union concerned and their counterparts from the parent company of the South African subsidiary involved in a dispute, in order to put direct pressure on management;

iii. Working contacts between union representatives in a parent company and in its various subsidiaries inside and outside South Africa in order to pave the way for effective collective bargaining by the independent black trade union movement in South Africa;

iv. In cases of continued obstruction by management, international campaigns on the TNCs concerned involving appropriate solidarity action. Such international campaigns will be initiated in response to the expressed needs of the independent black trade union movement, by the ICFTU, in cooperation with national centres and ITS;

v. Research into the activities and structure of target companies with a view to identifying the scale and nature of commercial links with South Africa;

vi. The development of information material on the situation of South African workers in the companies and their unions, with particular reference to their views on the fight against apartheid and the companies policies, for distribution to union members in the target companies;

vii. Suspension of contracts calls for bans on new investment and disinvestment where companies refuse to work with the independent black trade unions in South Africa.

Influx control and migrant workers

13. The ICFTU reiterates its abhorrence of the apartheid system and particularly singles out the pernicious influx control system which denies South African workers the right to seek work where they wish, to live with their families and to live normal family lives. The fight of the independent trade unions against this obnoxious system should be supported by the international trade union movement by providing assistance aimed at mitigating the immediate problems. Programmes of assistance to migrant workers such as those already operating in Botswana and Lesotho should be extended into South Africa in order to strengthen the trade union movement in the Southern African region as a whole.

Strengthening South Africa's neighbours

14. The ICFTU believes that apartheid is at the root of the hegemony pursued by South Africa in the region beginning with Namibia for which the ICFTU calls for compliance with Resolution 435 on Namibia which decided to ensure the early independence of Namibia through free and fair elections under the supervision and control of the UN. The ICFTU vigorously condemns the continued destabilisation of the region through political, military and economic interference. The ICFTU strongly believes that strenghening of the economic base of the frontline states would also contribute to the dismantling of apartheid. It therefore calls on all countries to support effectively measures proposed and being undertaken by the Southern Africa Development Cooperation Conference (SADCC) countries to reduce dependence on South Africa. In supporting the SADCC countries, trade unions in industrialised countries should also contribute to the strengthening of trade unions in those countries to enable them to play a major role in the SADCC process of development. The unfavourable conditions imposed by international agencies and banks in respect of aid, loans and investment funds negatively affect the economic growth of these countries. The ICFTU calls on the international community to change these policies in order to strengthen the economic position of the countries in the region.

Conclusion

15. The key to change in South Africa lies within the country and will be determined by the black majority. However, international resolutions translated into action can help accelerate progress towards democracy and justice. Escalating economic sanctions, discouraging white immigration, ending government collaboration with the South African regime and targeting campaign activities on specific transnationals offer four specific and practical ways of forcing the message home to the South African government that apartheid must end. These measures will be supported by a wide spectrum of opinion in all countries, including most importantly the independent black trade unions in South Africa. The international free trade union movement strongly urges all governments, and especially those of South Africa's main economic partners, to adopt these proposals and thus clearly inform the apartheid regime of the consequences of continuing its racist policies. The ICFTU reiterates its call for the immediate release of imprisoned black trade union and political leaders, the cessation of repressive measures against the black community, the unbanning of all political organisations and of political activity in order to develop a society based on universal suffrage, full respect for the Universal Declaration on Human Rights and an undivided South Africa.

Recommendations

16. The Executive Board is invited, subject to any amendments, to adopt the attached statement and to follow this up by instructing the General Secretary, in consultation with the South Africa Coordinating Committee, to:

i. Initiate campaigns on target companies in support of the independent black trade union movement;

ii. Undertake an information campaign, with the affiliates concerned, to discourage white emigration to South Africa;

iii. Work with affiliates, particularly in the main trading and investment partners of South Africa, to press for firm government commitments to an effective sanctions policy;

iv. Initiate a vigorous campaign on governments to end political collaboration with the South African government;

v. Continue the campaign for the immediate release of all detained trade unionists in South Africa (list attached);

vi. Utilize the ICFTU Coordinating Committee to exchange information, review, encourage and assist affiliated organisations and ITS action to implement the ICFTU's policies on South Africa.

AF/E/kb - 12 April 1985

Statement by the AFL-CIO Executive Council

on

South Africa

May 7, 1985
Washington, D.C.

Despite the outcry of world public opinion, the situation in South Africa continues to deteriorate as violence mounts and the regime intensifies its repression of black leaders. The Reagan Administration's policy of "constructive engagement" is failing. A new course is needed to force Pretoria to dismantle the system of apartheid.

The AFL-CIO endorses the statement by the Executive Board of the International Confederation of Free Trade Unions adopted in Washington on April 11, and approved by the leadership of the independent black trade union movement of South Africa, which was represented at the meeting. In keeping with that statement we call upon our government and the other industrial democracies to take the following steps:

- ban new investment in South Africa;
- end all investment guarantees, export credits and trade promotion with South Africa;
- stop new IMF loans as well as other bank loans to the South African state and publicly-owned companies;
- halt the sales of Kruggerand and the purchase of South African coal;
- punish violators of the U.N. oil embargo against South Africa;
- embargo the sale of arms to South Africa, especially those used by its military, security and police forces;
- compel disinvestment by multinational companies in the energy and high-technology sectors;
- force disinvestment by all multinational companies that have been identified by the independent black trade union movement as being in violation of internationally accepted labor standards.

As the AFL-CIO proposed last February, the International Labor Organization should consider establishing documentation and research machinery to monitor the conduct of all corporations operating in South Africa, with regard to their recognition of black trade union rights, the training and upgrading of black workers, and their observance of universal labor standards.

In consultation with the black South African trade union movement and the ICFTU, the AFL-CIO will continue to review additional measures which might be effective in bringing about democratic change in South Africa.

The AFL-CIO again calls upon the South African government to repeal the so-called Preventive Detention Laws that are used to harass, intimidate, and imprison black labor leaders. The growing black trade union movement of South Africa remains the best hope for democratic peaceful change in that tragic country, and it deserves the full support of free trade unions everywhere.

Meanwhile, not content to confine its repression within its own borders, Praetoria has announced its intention of establishing an international administration in Namibia, in contravention of U.N. Security Council Resolution 435. The AFL-CIO concurs with the ICFTU in condemning this action as a provocative move aimed at perpetuating South Africa's illegal control over Namibia.

South African trade unionists known to be in detention

			Date of detention
1	Bavumile Vilakazi	UTP Educator	12.12.84
2	Xolani Nduna	Chemical Workers Industrial Union	
3	Zanemvula Maphela	Paper, Wood and Allied Workers Union	
4	Ntsikeldo Qaku	African Food and Canning Workers Union	24.09.84
5	Boy Nkese	South African Allied Workers Union	
6	Andice Xintolo	South African Allied Workers Union	3.10.84
7	Jerry Kau	National Automobile and Allied Workers Union	3.10.84
8	Thema Mbandluna	Municipal and General Workers Union	
9	Zola Sekel	United Metal, Mining and Allied Workers Union	
10	Edward Manxiwa	United Metal, Mining and Allied workers Union	
11	Gilbert Binda	United Metal, Mining and Allied Workers Union	3.10.84
12	Isaac Lekoto	United Metal, Mining and Allied workers Union	3.10.84
13	Glen Moleso	United Metal, Mining and Allied Workers Union	3.10.84
14	J. Hlubi	Orange Vaal General Workers Union	30.10.84
15	E. Moeketsi	General and Allied Workers Union	27.11.84
16	M. Mdze	(from Ciskei, union unknown)	10.12.84
17	Sisa Njikelana	South African Allied Workers Union	18.02.85
18	Bonile Tuluma	South African Allied Workers Union	18.02.85
19	Sam Kikine	trade unionist	18.02.85
20	Isaac Ngcoba	trade unionist	18.02.85
21	Thozamile Gqweta	South African Allied Workers Union	20.02.85

20.3.1985

THURSDAY, MAY 9, 1985

AFL-CIO President Lane Kirkland sent the following telegram to South African President W.P. Botha:

> The AFL-CIO Executive Council, meeting in Washington, has asked me to convey to you its outrage over the death of Andries Raditsela while in police custody.
>
> This tragedy fits a pattern that has become all too familiar -- the death, under mysterious circumstances, of black South African leaders held under your Preventive Detention laws.
>
> It was under the same detention laws that Neil Aggett, who received the George Meany Award for Human Rights in 1982, and other opponents of the apartheid system died while in police custody.
>
> In a statement issued yesterday, our Executive Council called upon your government to repeal these laws, which are used to intimidate, harass, and imprison black trade union leaders.
>
> South Africa stands accused of deliberate and consistent disregard of internationally accepted standards of conduct and of perpetually violating the human and trade union rights of black workers and others.
>
> The AFL-CIO is outraged at this needless loss of life and in conjunction with the ICFTU calls on the South African government to repeal the Preventive Detention laws forthwith and ensure that human and trade union rights are observed. Unless these basic freedoms are observed, all talk of reform is irrelevant.

-30-

(Contact: Rex Hardesty, AFL-CIO Department of Information, 202/637-5010)

COUNCIL OF UNIONS OF SOUTH AFRICA
P.O. BOX 10928, JOHANNESBURG, SOUTH AFRICA, 2000 TEL: (011) 29-8031.

RESOLUTION ON DISINVESTMENT

Reaffirming the resolutions at the Joint Executive Council

Knowing that racial oppression through the apartheid system has been declared by the UN as a crime against humanity

Concluding that investment in South Africa therefore supports and perpetuates racial discrimination

This National Executive Committee therefore concludes that :

- Any investment in South Africa is therefore investment in apartheid
- there should be no new investment in South Africa whilst apartheid still exists
- the sale of Kruger rands in other countries should be prevented by trade unions in those countries
- there should be no defence, computer or nuclear technology sold to the S.A. White government
- there should be no investment in homeland areas which exploit the racial laws.

Senator **Proxmire**. Thank you, Mr. O'Farrell. We thank all of you gentlemen. I apologize again that it's so late. We started at 9:30 as you know because you have been sitting here very patiently.

Now let me point out first to make it clear because in some of the testimony here there was an attack on disinvestment proposals. There are no disinvestment provisions in S. 635. I don't know of any member of Congress who's proposed disinvestment. Maybe later on that might be a necessary strategy but that is not before the Congress at the present time.

SULLIVAN PRINCIPLES

Second, Mr. Weedon, Mr. Marzullo, Mr. Schroll, you all mentioned Leon Sullivan and the Sullivan principles, how important they are, and you cited Sullivan over and over again. Let me quote from a letter to the committee dated April 12, 1985—as a matter of fact, a letter to me—from Leon Sullivan.

Here's what he said, and I quote:

> For the last 6 years I have advocated: (1) No new investment by U.S. companies in South Africa; (2) no new bank loans to the South African Government; (3) the banning of the sale of the krugerrand; (4) economic sanctions that will influence the South African Government to abolish all apartheid laws. I continue to support these positions and urge legislation that will make them law.

So here you have the Reverend Sullivan taking a clear, unequivocal position in favor of S. 635.

Now, Mr. Weedon, on page 4 or 5—the pages aren't numbered—on page 4 or 5 of your statement, you say: "Some people say the Sullivan principles do not go far enough." You then go on and cite a report by a Prof. Lawrence Schlemmer, who is a professor of sociology at the University of Natal. He has completed a survey and has concluded that the majority of the black people in his sample are happy to have foreign investment in South Africa and realize that it produces many jobs and, therefore, helps a lot of people to eat.

Now, Mr. Weedon, Bishop Tutu appeared before the House Foreign Relations Committee on December 4, 1984, and he said this:

> I have tried to say to people you should be aware that if I sat here and said before this committee that I support economic sanctions against South Africa that that is an indictable offense and until recently on conviction the mandatory minimum sentence would be 5 years imprisonment, which indicates how the South African Government regards the importance of foreign investment.

Then he goes on to say a little later,

> The point is that in South Africa we have a society that is riddled through and through with informers and people are aware of the very heavy penalties for expressing what you might call unpopular views with the authorities. It's highly unlikely that if they were told their views were going to be treated confidentially that they would accept that.

Now in view of that, what value is a survey in which the black people in South Africa are asked how they feel about investment? If they say that they think investment should be curtailed or restrained in any way, it's the slammer. Isn't that right?

Mr. **Weedon**. I think you have a good point, but I would comment that Professor Schlemmer has been undertaking to deal with these problems for many years. I have talked directly with him on the point that you raised. He says that he believes that he has worked out techniques which will assure the respondents that their views will not be conveyed to other people and he thinks it's a valid survey.

I can only say that he's a very much respected professional in the field.

Senator PROXMIRE. On the other hand, Mr. O'Farrell has given us what the black trade union position is and they are clearly in favor of every major provision in S. 635.

Mr. WEEDON. Yes, sir; and I think that, just as in this country, there are many people with many different points of view. I have talked with the gentlemen that Mr. O'Farrell refers to. I know that that's his view. I have talked to others who have different views.

I am not trying to say that I know what the majority view is. I was merely reporting what a respected surveyor found in going out and talking to a number of people.

Senator PROXMIRE. You know that the Schlemmer report was paid for by the State Department, the authors of constructive engagement?

Mr. WEEDON. Yes, sir.

Senator PROXMIRE. They paid for it and they got what they wanted.

Mr. Weedon, in your testimony you talk about the importance of education for the black community and I could not agree with you more. Of course, that's vital. One reason we want to put pressure on the South African Government to abolish apartheid is precisely because that Government uses education as a political instrument to keep South Africans in a semipermanent state of ignorance and economic deprivation.

The 1980 House report of a study mission to South Africa noted, and I quote:

> Since the South African Government passed the 1953 Bantu Education Act, restricting severely the types of subjects taught in African public schools, the quality of black education has declined sharply.

Don't you think that after well over 30 years of condemning such policies without effect it's time we should begin to use limited sanctions?

Mr. WEEDON. I was suggesting there was another alternative, Senator, than using sanctions. And the suggestion which I was making was that we might think of going to the South African Government and saying that we are prepared to help them to improve and broaden their educational system and make it into one educational system for everybody regardless of race in South Africa, because I sincerely believe that until the caliber and quality of education in that country is uniform for everybody and is markedly raised for the nonwhites in that country that we are going to have great problems with social and political improvements that we all want to see in that country.

HELP PROVIDE BETTER EDUCATION

Senator PROXMIRE. Well, that's an ingenuous notion. If we were talking about the State of Wisconsin, that might make sense. But should we go to the sovereign country of South Africa, which has been pointed out has a relatively fine economy, high GNP, and tell them that we want to help them provide better education? What do we do, have an aid program for their education?

Mr. **Weedon**. Yes, sir.

Senator **Proxmire**. You don't think that's really very practical, do you?

Mr. **Weedon**. I really do. If we mean business instead of just complaining, we can expand on our present USAID education program in South Africa and use it as a bargaining tool with the Government.

Senator **Sarbanes**. Would the Senator yield?

Senator **Proxmire**. I'd be happy to yield to my good friend from Maryland.

Senator **Sarbanes**. Do you believe the Government of South Africa would join with you in an effort to institute a wholly nondiscriminatory educational system in South Africa?

Mr. **Weedon**. Mr. Senator, obviously I don't know. But by way of example, when the American companies got together and built Pace school in Soweto, they took on the South African Government and said,

> We're not going to contribute to a new school in Soweto unless you let us change the standards of education so that we don't obey the standards which have been set and are enforced for black education.

And after a period of about 2 years they won that battle and they won it not with clubs and sticks but with the offer of a new school which was badly needed.

Senator **Proxmire**. A school in Soweto is one thing. How many students go to that school?

Mr. **Weedon**. It's about 1,000 I think at the moment.

Senator **Sarbanes**. Mr. Weedon, I think you used the phrase "black education" in describing that. Now I understood your earlier answer to Senator Proxmire to be about a system of nondiscriminatory education and I was asking whether you saw any chance that the Government of South Africa would agree to that. They might well agree to you coming in to support a separate educational system. In fact, some of that is being done today and some think it merely strengthens apartheid rather than weakens it.

Mr. **Weedon**. Mr. Senator, I said in my statement that it should be a uniform system of education, not multiple separate systems of education, and I sincerely believe that's necessary and I think that's what you're implying.

Senator **Proxmire**. Mr. Marzullo, I agree with you that the American companies adhering to the Sullivan principles have been a positive force in South Africa, but since they employ only 70,000 South Africans of the 22 million, it's a tiny percentage—that's a small fraction of 1 percent—we need to go beyond that to help achieve change.

What I don't understand is why industry opposes making the Sullivan principles mandatory. Mr. Schotland testified earlier that the Department of State opposition to that is not valid.

Mr. **Marzullo**. Senator, I think when you talk about opposing a mandatory Sullivan provision, part of our dilemma rests in what does one mean by a mandatory Sullivan provision.

Senator **Proxmire**. What we mean is that every American company there would have to comply. We would require it, and we could have sanctions against them of course. We could provide that they would have to disinvest or something like that if they failed to comply.

Mr. **Marzullo**. That part doesn't bother me at all, since I'm chairman of the support unit. I have long stated that I thought every American company ought to be a member of the Sullivan effort.

The problem again with mandatory—what we are worried about is that in effect we are on the battle line of South Africa, trying to change the society and confronting authority in that society. We want to be in a position to maintain creative initiatives and to develop programs which are well on their way to being regional and national in scope rather than local without having to be put into a situation where we are: One, going to force the South African Government to tell our affiliates that they cannot provide information to us or work with us, or two, we are in a situation where we have got extraterritorial provisions and the South African Government doesn't allow us to continue to do what we have done.

I think it's significant, Senator Proxmire, that——

Senator **Proxmire**. Let me just interrupt. You say that you would not oppose mandatory Sullivan principles for American companies located in South Africa; is that correct?

Mr. **Marzullo**. I said it depends on how you define mandatory. If you mean that every American company should be a member of the Sullivan team, yes. If you mean enactment of laws putting in monitoring mechanisms there and here which get us in trouble there and here, obviously it's going to be almost impossible for us to do what we have been doing or to expand the efforts that we have embarked on.

Senator **Proxmire**. Why would it be impossible? You expand it automatically if you require all American companies to abide by those principles.

Mr. **Marzullo**. The South African Government has laws about business practices which they have never enforced, I understand, which would make it impossible for us, for example, to get information from our companies if it involved extraterritorial legislation. In short, if they thought American domestic law was impinging on their domestic law.

Senator **Proxmire**. Well, then the South African Government would have a choice. In other words, if they wanted to enforce a law that would make it impossible for us to impose such a requirement for American companies, they would just lose the companies. We would say that our companies would have to comply.

Mr. **Marzullo**. Well, one would hope that they would say that one would not have to comply. We're not sure, and we are not so sure that you want to penalize one of the few real change agents in that society.

Senator **Proxmire**. Mr. Schroll, you say on page 3 of your statement that, and I quote, "The free South Africa which will inevitably evolve, with all racial groups participating in the political and economical system, will be a stable, worthy nation."

QUICK CHANGE OR REVOLUTION

My concern, heightened by the testimony of other witnesses here today, is that unless South Africa makes changes quickly, a free South Africa will not evolve. Instead, a violent revolution will become inevitable. So our premise of what will happen there unless change comes quickly is different from yours.

How do you combat that notion that we've heard so much and we hear from people like Bishop Tutu and others that if we don't find some way through economic sanctions to overcome this apartheid system that with the overwhelming majority of people treated this way that we're going to get a bloody revolution?

Mr. **Schroll**. The danger, of course, is there on that, but as I have said, the American corporate presence there has been very effective in lobbying with the Government in securing some changes—not enough, not fast enough, I'll grant you, and we are renewing our efforts. We have an application of the Sullivan principles which involves our going to the Government and making representations. In April, I went and visited two members of Parliament in Capetown and with what Mr. Weedon said there, one of the things I emphasized was the necessity for a unitary education system is there and their Government has to move in that direction. And while I was not thrown out on my ear, I was listened to, and there was general agreement for the need of improving black education and for eventually coming to a unitary educational system.

Senator **Proxmire**. Senator Sarbanes.

Senator **Sarbanes**. Thank you, Mr. Chairman. I know we have a vote and I will try to move very quickly. Gentlemen, if you could hold down the length of your answers I would appreciate it.

I have a sense of ships passing in the night and I want to get right to that point. You have all come in and argued against disinvestment. S. 635, as Senator Proxmire pointed out, does not involve disinvestment. Therefore, I would like to put to you very directly the question, what is it in S. 635 to which you would object? Why can you not support S. 635?

Mr. **Weedon**. Senator, I mentioned in my testimony I am the person here who is directly involved in trying to evaluate the performance of the American companies in South Africa in terms of what happens in the workplace and in terms of their social activities.

To the best of my knowledge, nobody else is undertaking to do that sort of thing anywhere in the world and rating the companies concerned. I would hate to be involved—in fact, I will not be involved in trying to carry out that process if it's done as a mandatory legal structure.

We already have Sullivan signatories who have dropped out of the program because they didn't like the grade we gave them. I have been getting threats from general counsels of companies because they don't like the grades we give and my answer today is, "If you don't like it, you can drop out."

Senator **Sarbanes**. Well, Mr. Weedon, let me interrupt you and put my question again. S. 635 does not require mandatory signature.

Mr. **Weedon**. Fair enough. If it doesn't, that's fine.

Senator **Sarbanes**. Some of the arguments you make are not without some thrust to them. I recognize that. But none of the arguments has gone as to the provisions of S. 635. What is there in S. 635 you object to? Why can't you come in gentlemen, give exactly the statement you've given on other considerations—on disinvestment, mandatory application of Sullivan—and then say, having said all that and wanting to be sure that you have that in mind, we support S. 635?

Mr. **Marzullo**. Is S. 635, Senator Sarbanes, the one dealing with new investment?

Senator **Sarbanes**. Yes, it deals with new investment and new loans.

Mr. **Marzullo**. I'm speaking as chairman, not as trying to represent some company's position. I understand from some companies that part of the problem with the new investment is, depending on the industry—and they mention specifically manufacturing companies—that they cannot really survive economically and competitively in their business, not only in South Africa but anywhere else, without new infusions of capital and that for them this infusion of capital is not available out of retained earnings in South Africa. This is what I was told by two companies who are manufacturing companies, who registered their concern about the bill.

COMMITMENT OF BUSINESS TO EFFECT CHANGE

Senator **Sarbanes**.You say in your statement that U.S. businesses should be encouraged to increase their role in that economy, and voluntary efforts to influence social change.

If those two things are not linked, should companies still be encouraged to increase their role in the U.S. economy? Or put more bluntly, would you encourage U.S. business to increase their role in the economy if they were not committed at least at a minimum to the Sullivan principles?

Mr. **Marzullo**. Absolutely not.

Senator **Sarbanes**. What should be done about those companies that will not commit themselves to the Sullivan principles, which may in fact be working directly contrary to the very principles and rationale of the case you presented to the committee today?

Mr. **Marzullo**. Well, I think they will have to face the full opprobrium of various critical constituencies in this country.

Senator **Sarbanes**. That answer leads me right to my next question and I'm moving quickly because the bell is going to ring in 1 minute and we're going to have to go vote. But we had testimony before the Foreign Relations Committee from the Chamber of Commerce and the Committee for Trade in South Africa saying that we shouldn't do anything in terms of public policy. By the same token, they recognize that private action is a shielded and protected activity in our society. I can't understand why the business community would not prefer to have legislative action by the Congress to set the parameters and establish the framework for the process of bringing about change in South Africa, rather than leaving it, in effect to be fought out in the streets.

Mr. **Marzullo.** We don't want it fought out in the streets. Someone is opposing parts of it. One is opposing certain parts of it, not opposing other parts.

Senator **Sarbanes.** Well, you're doing a better job than the witnesses did the other day. They were nowhere near as perceptive and thoughtful about it. They said, well, that's protected under our system and we'll leave it to be fought out in the private sector.

It's my view that no one should really want that.

Mr. **Marzullo.** Senator, we are not in disagreement on what we are trying fundamentally to do. We are earnestly searching, as you are in Congress, to find a way of sending a message loud and clear to that troubled society that all of us want change in that country and we want it as quickly as it can be obtained.

Senator **Sarbanes.** Would you agree with me that our current policy, whether intentionally or not—perhaps unwittingly—a message that's being perceived as indulging the apartheid regime? Is that not how it's perceived by many people in South Africa, by people elsewhere in Africa and elsewhere in the world, and by people in our own country?

Mr. **Marzullo.** Some people certainly have that perception.

Senator **Sarbanes.** A significant number so that it creates a difficult problem for protecting or furthering American interests?

Mr. **Marzullo.** Personally, I wouldn't think so, Senator, because I have to differentiate between the statements that some of my friends make publicly and what they tell a lot of us privately.

Senator **Sarbanes.** Would you then conclude that there's no need to make a change in policy to send a sharper, stronger, clearer message?

Mr. **Marzullo.** I am all for sending sharp, clear messages because I think that helps.

Senator **Sarbanes.** Do you think we have failed to do that at this point?

Mr. **Marzullo.** I don't think you have failed to do it, Senator.

Senator **Sarbanes.** Then why do we need to do it? Either we need to do it or we don't. If we need to do it, it's because the message that's been sent is not efficiently clear and sharp.

Mr. **Marzullo.** It's not really that simple, Senator Sarbanes. There's a dichotomy here. One, there is real change we are convinced is going on in South Africa. It's not going on fast enough. The message helps to convey a universal, nonpartisan sense that we want that change to be accelerated.

All I'm saying is we don't want to become so punitive that we turn off a process which in terms of South African history is really unique in that it's really started something which has never been started before. That's all I'm saying.

Senator **Sarbanes.** I'm a sponsor of S. 635 and I'm fairly sensitive to that, because there's no disinvestment as yet. Who knows what will come? That depends in part on what kind of change occurs. I assume you don't hold the position that American companies should stay in a society no matter how abhorrent the practices of that society might be, as a hypothetical?

Mr. **Marzullo.** I most certainly do not.

Senator **Sarbanes.** OK. I didn't think you would.

Senator **Proxmire**. Unfortunately, the vote is in the last 5 minutes, Senator Sarbanes.

Senator **Sarbanes**. Let me just make two points to Mr. Weedon and I'll leave them as comments.

Senator **Proxmire**. You take over the Chair. I have some questions to be asked to Mr. O'Farrell and others for the record.

Senator **Sarbanes**. First of all, reading your statement that apartheid will be ended only by vote of white South Africans or by revolution, I'm not sure how you would have counseled the American colonists at the time of the American revolution.

Obviously, black South Africans face a very difficult problem because they are blocked out of any peaceful way of bringing about change in their society.

If we don't somehow try to contribute to developing a process for achieving peaceful change, it seems to me they are going to be forced back to a violent approach, simply because the peaceful approaches are all denied them. Mandela is in jail. The UDF people now face trial, and potentially long jail sentences.

The final point I want to make, and then I'm going to adjourn the meeting, is that it's an unfair putdown to many people in this country who are very genuinely concerned with the South African situation and its potential for violence there to attribute their concern to a guilt complex and to frustration with trying to deal with a minority situation in our own country.

Many of the people who are very much involved in this effort have expended an enormous amount of time and energy on it over the years, and I do not regard them as functioning out of a guilt complex. They are simply being consistent in carrying forward some very strongly held ideas.

Gentlemen, thank you very much. I'm sorry we had to bring this to a close.

[Whereupon, at 1:25 p.m., the hearing was adjourned.]

[Response to written questions of Senator Proxmire to Patrick O'Farrell follows:]

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June 10, 1985

Mr. Paul Freedenberg
Staff Director
Subcommittee on International
Finance and Monetary Policy
Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Freedenberg:

In reply to Senator Proxmire's question, which you transmitted in your letter of May 31, 1985, I would make the following statement:

QUESTION FOR MR. O'FARRELL
SENATOR PROXMIRE
Page 1

1. I presume that you are familiar with the views of black labor leaders and their union members in South Africa. What is your impression with respect to how South African blacks feel about the question of American investment in South Africa? Do they favor more investment? Do they favor restrictions on new investment? Do they favor disinvestment? What is your sense of how they feel on these questions?

It is understandable that there may be some reservations and hesitations among black leaders as to the best way to go in the fight against apartheid. There is, however, a commitment in the black labor movement to fight apartheid without compromise to the bitter end. There is also a growing demand on the international community to put more pressure on Pretoria and to undertake more effective action to end the system of apartheid. While for 35 years the victims of apartheid have heard condemnations against the system from public podiums, at the market place it has been "business as usual". While they hear Secretary of State George P. Schultz describe apartheid as "morally indefensible....., unjust, anachronistic and untenable," they live with the reality of "constructive engagement" and the perception that it is a compromise with apartheid and a gesture to white South Africa.

On the basis of extensive consultations with black South African trade unionists, both leaders and rank-and-file members, it is clear to us that a large majority fully supports the kind of actions called for in S635.

The Federation of South African Trade Unions (FOSATU), one of the two major black federations, went on record in April 1984 that: "FOSATU as a trade union organisation concerned with the jobs and livelihood of its members has to give full consideration to the question of disinvestment. However, it is FOSATU's considered view that the pressure for disinvestment has had a positive effect and should therefore not be lessened."

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Joe Foster, General Secretary of FOSATU, declared recently that his organization would wholeheartedly support total disinvestment if it could be assured that such a move would bring about the changes desired by the workers. Joe Foster did, however, indicate that he did not favor the withdrawal of foreign companies at present because FOSATU has a sizeable membership at such firms as Ford, General Motors and Volkswagen. He pointed out that as of now the organization had no mandate from the workers in these firms to advocate withdrawal.

Such reservations are not uncommon among labor leaders taking a pragmatic view of their situation and concerned with the deepening recession in South Africa. One such labor leader warned that in prescribing a remedy we "should not kill both the disease and the patient at the same time."

At a recent meeting which I attended, Joe Foster made it clear that his organization supports the provisions of S635.

The Council of Unions of South Africa, the second major black trade union federation, passed a resolution on disinvestment on December 8, 1984 which clearly states its opposition to new investments in South Africa (A copy of the full text of the resolution is enclosed.)

In summary, I would conclude that the vast majority of Black South Africans would welcome strong legislation in the United States which would convey the moral outrage of Americans and a commitment to help end apartheid. The reservations which have been voiced are merely a safeguard against a pyrrhic victory which they cannot afford and - after all the suffering that has gone on in South Africa - which they do not deserve.

If there is any other information we can supply to your committee, we would be happy to do so.

Sincerely yours,

Patrick J. O'Farrell
Executive Director

ckl

Enclosure: a/s

ANTI-APARTHEID ACT OF 1985

THURSDAY, JUNE 13, 1985

U.S. Senate, Committee on Banking, Housing, and Urban Affairs, Subcommittee on International Finance and Monetary Policy,

Washington, DC.

The subcommittee met at 11:50 a.m., in room SD-538, Dirksen Senate Office Building, Senator John Heinz (chairman of the subcommittee) presiding.

Present: Senators Heinz, Gorton, Mattingly, Hecht, Proxmire, Dixon, Riegle, and Sarbanes.

OPENING STATEMENT OF SENATOR HEINZ

Senator **Heinz**. Today we are going to have the third in a series of hearings dealing with the legislative proposals to alter the economic framework of the U.S. Government's relationship with the Republic of South Africa. During the past two hearings we have heard from the administration, from Senators Kennedy and Weicker who drafted S. 635, from academic and legal experts on the subject, and from those who directly represent or audit United States companies that currently do business in South Africa.

I think these hearings to date have built a strong record for dealing with the issue. My colleagues and I have learned a great deal about the realities of United States banking and investment and United States commerce with South Africa and about the details of current proposals to alter the relationship we have with South Africa. Today, if I may say so, we are particularly lucky to have with us a man who's done more, in my judgment, than any other single individual in the United States to effect peaceful change in South Africa and to better the lives of the nonwhite population in that country.

South Africa, as we all know, has become one of the dominant issues on the political agenda for 1985 and it is clear that Congress will be taking action on that issue this year. The Rev. Leon Sullivan, who I am so pleased to have as a constituent, of the Zion Baptist Church in Philadelphia, is an individual who is famous not only in Philadelphia and our State but throughout the country, and in particular we in this country, I think, owe him a deep debt for bringing the issue of South Africa to our attention and to our moral consciousness many, many years ago.

Since the founding of the Republic of South Africa in 1948, Americans have been concerned about United States corporate investment and involvement in that troubled land. Most have despaired that anything could ever be done peacefully to better the lot of the nonwhite population in South Africa. Reverend Sullivan has shared that concern, but apparently not that despair, and he has gone beyond rhetoric to promulgate a voluntary code of conduct for United States companies operating in South Africa. Today, the majority of black workers employed by U.S. companies are covered by Sullivan principles. As a result, they are guaranteed desegregated facilities, equal pay for equal work with their white counterparts, and other principles of fair play and decency which we take for granted here in this country. From 1977 until today, no one familiar with South Africa has difficulty understanding what is meant by the term "Sullivan principles." Reverend Sullivan's importance is reflected in the fact that his name has become a term of art and a symbol of fair play. I can't think of a more fitting introduction than to cite that fact and I can think of no one who is more knowledgeable on the subject of United States corporate involvement in South Africa than the Rev. Leon Sullivan from whom we will be hearing in a moment.

I would also like to note the presence in our audience of Mr. Norman Holmes. Mr. Holmes, would you please stand up. Mr. Holmes has come to Washington from Philadelphia to present a petition with more than 500 signatures on behalf of "Philadelphia Lawyers Against Apartheid." Mr. Holmes, I would be happy to receive your petition at this point and we will make it a part of the record without objection. Thank you very much.

I would also like to note the presence of Philip Lacovara, representing the American Bar Association. Because of the shortness of time caused by the rescheduling of Treasury Secretary Baker to today's date, this hearing will necessarily have to be truncated. Therefore, we are unable to receive the oral testimony of Mr. Lacovara and instead will make his written testimony a part of the hearing record without objection. Mr. Lacovara, however, you are here and you are available I know to answer any questions should any of my colleagues wish to direct any questions to you.

[The complete prepared statement of Mr. Lacovara and report of the ABA follow:]

STATEMENT OF PHILIP A. LACOVARA, MEMBER, HOUSE OF DELEGATES, AMERICAN BAR ASSOCIATION

Mr. Chairman and Subcommittee members:

My name is Philip C. Lacovara and I practice law in Washington, D.C. I appreciate your courtesy in permitting me to participate in these hearings. I am a member of the American Bar Association's policy-making House of Delegates and also serve as a member of the Council of the ABA's Section of Individual Rights and Responsibilities. It was that Section which proposed the policy upon which I appear today. I am particularly honored to be representing the President of the ABA, John C. Shepherd, in the expression of the ABA's views.

The American Bar Association supports immediate legislative action, including imposition of carefully tailored economic sanctions, designed to induce the Government of South Africa to dismantle its official policy of apartheid.

Apartheid is of special concern to the lawyers of America. South Africa is by no means alone in the world in repressing the natural human rights of its citizens, but it is alone in the world in seeking to shunt its black citizens into make-believe "countries" unrecognized by any other nation. South Africa's system is unique because it enshrines in its constitution this odious system of discrimination and repression and because it perverts the instruments of the law -- statutes and courts -- in implementing this official policy. Quite simply, apartheid is a violation of international law and is contrary to what we believe are the purposes of the law.

In February of this year, the policy-making body of the ABA, the House of Delegates, adopted this resolution:

> Be It Resolved, That the American Bar Association opposes the South African policy of apartheid and its various manifestations and urges the United States Government to take appropriate action to oppose apartheid and its various manifestations.
>
> Be It Further Resolved, That the American Bar Association opposes the policies of any government which discriminates against its inhabitants on the basis of their race.

This resolution reflects the strong sentiment of the American Bar not only that the South African system of apartheid is unacceptable but also that it is now time for our Government to take positive and precise action to convince the South African Government to reverse that policy.

The House of Delegates had before it a detailed and exhaustive report outlining the systematic misuse of the law and of the forces of the law to implement the South African Government's policy. As one of the members of the House of Delegates who supported the resolution, I know that the House found the case for action by our Government clear and compelling. I request that the report, that was before the House of Delegates, which had been prepared by Professor Goler Butcher, chair of the Subcommittee on South Africa of the Section of Individual Rights and Responsibilities, be included in the formal record of these hearings.

One of the ABA's eight goals commits the Association to advance the rule of law in the world. Our commitment to this goal reflects our view that the United States, through its major public and private institutions, has both the right and the responsibility to speak out when we see other nations systematically violating fundamental, internationally-recognized human rights. Our Nation also has both the right and the responsibility to take prudent but effective action to try to relieve these abuses. To fear that a particular initiative may not be fully effective is no excuse to do nothing. Noble rhetoric and furrowed brows do not mark the limit of a great Nation's capacity to promote the international rule of law.

As lawyers, we know that carefully crafted sanctions can deter persons from continuing on an offensive or injurious course. The practical lesson of the law is that precisely tailored sanctions are effective in influencing private behavior. We are satisfied that the sanctions of the law also can be effective in inducing nations to conform their conduct to basic international legal norms.

Principles Governing Economic Sanctions

It is the ABA's position that sanctions at this time are appropriate and necessary. Although the ABA does not claim any special expertise in selecting particular sanctions that will be both prudent and effective, we can suggest several major principles that should guide Congress in selecting specific sanctions to be applied in the struggle to end apartheid.

First, sanctions should be directed primarily at the Government of South Africa itself. It is the South African Government that has adopted the policy of apartheid. It is that government that has the political power and, in our view, the legal and moral responsibility to end apartheid. Those arms of the government vested with the responsibility of enforcing apartheid -- the police and the military, among others -- should be the particular object of such sanctions. That focus would be consistent with the current embargo against the sale of military material to South Africa.

Second, just as with the coercive sanctions that American courts apply in order to compel compliance with the dictates of the law, sanctions directed at South Africa should be conditional and prospective. That is, the Government of South Africa should be able to relieve itself of continuing sanctions as soon as it has taken measurable and substantial steps toward ending the various manifestations of apartheid. Just as with the recalcitrant witness who is committed to custody until he is willing to testify, the Government of South Africa would have in its own pocket the key to unlock sanctions. All it would need would be the political will to bring its conduct into conformity with basic legal standards recognized by the world community.

Third, the sanctions adopted should recognize that, as a practical matter, a system that has evolved over generations cannot be purged peacefully overnight. Therefore, sanctions should be designed to stimulate a pattern of reform over a period that, while it must be brief, may take several years.

The imposition of sanctions for a stated period would have the added benefit of alerting the South African government that U.S. attention to dissolution of apartheid will be closely monitored. Conversely, the imposition of increasingly more rigorous sanctions within a set period will act to focus the energies of the South African government on continued, substantial progress.

The prospective application of sanctions will emphasize the importance of constructive action, instead of dwelling on past misconduct. Such application also would pose no interference with existing contractual obligations.

Fourth, recognizing the President's special responsibilities for conducting foreign relations within the contours of national policy described by law, legislation should give the President primary responsibility for implementing the sanctions and for determining their effectiveness. Thus, the President should have primary responsibility for determining whether the South African Government has achieved sustained and significant progress in dismantling the system of apartheid and thus in qualifying for remission or suspension of the sanctions. The President also is in the strongest position to request the imposition of comparable sanctions by other nations. Such an expanded multilateral effort is to be strongly encouraged. In this regard the actions by Japan and Sweden should be good examples.

The President also can assure that our policy is consonant with that of our allies. A repeat of the Soviet pipeline incident would be counter-productive. Similarly, the President can best determine instances, if any, where access to critical materials should be a factor in foreign policy decisions.

Specific Proposals for Sanctions

The ABA is not supporting any particular bill. We note, though, that many of the features of S.635 are consistent with the basic principles that are outlined above. Some features of the bill would have to be modified to reflect what we recommend as the appropriate principles to inform congressional action.

Specifically, the ABA would support sanctions to prohibit the United States Government and American financial institutions and other private concerns from extending further loans or credits to the Government of South Africa. As provided in pending legislation, such loans would be permitted if they were to be used by the government, for instance, to finance non-discriminatory housing or schools or to provide other public services without discrimination. Similarly, in light of evidence that American computers may be used to monitor and enforce various apartheid laws and regulations, we support restrictions on the sale of computers to the government of South Africa. Sanctions of this sort seem to us to be narrowly and precisely targeted.

It has been said that, if American banks do not make loans to the South African Government, banks and governments elsewhere will. It has been said that, if American companies do not sell computers to the South African Government, companies elsewhere will. Perhaps that is true, although I doubt that these objections adequately measure our economic and technical leadership and importance.

But those protests miss the point. As a nation, we can only do what we can do. Each nation must answer to its own conscience. As Secretary of State George P. Shultz noted in defending the imposition of sweeping trade and other economic sanctions against Nicaragua, "...there's a certain sense of feeling that regardless of the effect, certain kinds of relationships with countries we think are doing a lot of damage are undesirable." As Senator Cranston noted in the recently issued report of the Foreign Relations Committee approving S.998, some 26 U.S. banks have voluntarily decided to make no new loans to the South African public sector.

The American Bar Association believes that our government and our institutions should not help to finance the South African Government, whose legal system is a perversion of universally recognized standards. In the struggle for international human rights, the United States should continue to be a proud and self-confident moral leader.

In sum, without indulging in the rhetoric of recrimination, the American government, through congressional action, should take immediate and concrete steps to demonstrate to the Government of South Africa that, at least in its relations with the United States, it cannot with impunity preserve a system that uses the law to repress, divide, and deprive on the basis of the color of a person's skin.

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REPORT

"From our beginning, regard for human rights and the steady expansion of human freedom have defined the American experience. And they remain today, the real, moral core of our foreign policy. The United States has said, on many occasions, that we view racism with repugnance. We feel a moral responsibility to speak out on this matter, to emphasize our concerns and our grief over the human and spiritual cost of apartheid in South Africa.

To call upon the government of South Africa, to reach out to its black majority by ending the forced removal of blacks from their communities and the detention, without trial and lengthy imprisonment, of black leaders."

President Reagan
December 10, 1984 [1]

"The political system in South Africa is morally wrong. We stand against injustice, and, therefore, we must reject the legal and political premises and consequences of apartheid...We reject unequivocally attempts to denationalize the Black South African majority and relegate them to citizenship in the separate tribal homelands. We do not and will not recognize these areas. All Americans are repelled by the sight of long-settled, stable black communities being uprooted and their inhabitants forcibly removed to barren sites in far away "homelands" they have never seen before. Neither can we countenance repression of organizations and individuals by means of administrative measures like banning and detention without due process of law."

Under Secretary of State Eagleburger
June 23, 1983 [2]

1/ Remarks of the President in ceremony commemorating International Human Rights Day (December 10, 1984). The President noted that "there are occasions when quiet diplomacy is not enough -- when we must remind the leaders of nations who are friendly to the United States, that such friendship also carries responsibilities for them, and for us."

2/ Bureau of Public Affairs, U.S. Dep't of State, Current Policy No. 497, Southern Africa: America's Responsibility for Peace and Change (June 23, 1983) [hereinafter cited as Eagleburger Statement].

I. Background

It is of paramount importance that the American Bar Association, with its long tradition of support for the Rule of Law internationally, adopt this recommendation to make clear its concern regarding South Africa's utter disregard of the Rule of Law and gross abuse of fundamental human rights and freedoms. 2A/

As the above-cited statements of President Reagan and the then Undersecretary of State Lawrence Eagleburger demonstrate, this recommendation for an ABA resolution declaring its opposition to apartheid and its various manifestations is in fact consistent with the long-standing position of the United States Government. 3/

2A/ This resolution is consistent with at least five (5) previous policies adopted by the ABA House of Delegates: 1) The Rule of Law resolution (2/75); 2) favoring economic sanctions against Rhodesia (8/72); 3) support for the International Covenant on Civil and Political Rights (2/79); support for the International Convention on the Elimination of All Forms of Racial Discrimination (8/78); and 5) support for the International Covenant on Economic, Social and Cultural Rights (2/79).

3/ In August 1963 the U.S., because of its concern over the dangers of apartheid to international peace and security, supported the Security Council's non-mandatory arms embargo against South Africa. The U.S. Ambassador to the United Nations commented: "It is only calling things by their right name to say that we are confronted for the moment with a deadlock between the overwhelming majority of mankind and the Republic of South Africa. There has been no forward motion; indeed. there has been retrogression --calculated retrogression. Press Release No. 4332, July 31, 1963.

Again, in the December 1963 Security Council action strengthening the non-mandatory arms embargo, Ambassador Stevenson remarked, "We all have an obligation under the Charter ... to act individually, to use our own influence to bring about a change in South Africa. Press Release No. 4328, December 4, 1963.

On February 1970 President Nixon set forth the U.S. position on southern Africa: "Clearly there is no question of the U.S. condoning, or acquiescing in, the racial policies of the white-ruled regimes. For moral as well as historical reasons, the U.S. stands firmly for the principles of racial equality and self-determination. See, Hearings, Subc. on Africa, Comm. on For. Aff., House of Rep., 93rd Cong., 1st Sess, 1973, p. 159. The Assistant Secretary of State, David Newsome, affirmed that "we have reiterated our abhorrence of apartheid and have reaffirmed our intention to maintain our arms embargo to South Africa. Id.

In November 1977, U.S. Ambassador Young in joining in the unanimous vote of the Security Council in favor of S.C. Res.

The importance of support for the commitment to the standard of equal rights and dignity for all *without distinction on the basis of race or color* needs no elaboration. Members of the legal profession have a special obligation to speak out against a constitutionally and legally mandated policy of racial discrimination and of other flagrant violations of human rights and fundamental freedoms. 4/ South Africa is unique in that it is the only country in the world with racial discrimination enshrined into its

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3/(cont.)/ 418, 32 U.N.SCOR (2046th Mtg.) at 5, U.N.DOC SP.V.2046 (1977), stated, "In the interest of encouraging South Africa's leaders to embark on a new course, President Carter has now authorized me to state that the United States is prepared to join with other members of this Council in imposing a mandatory arms embargo (under Chapter VII of the Charter) on South Africa."

In March of 1978 Patricia M. Derian, Assistant Secretary of State for Human Rights and Humanitarian Affairs, in a speech before the Lawyers' Committee for Civil Rights Under Law and Division V of the D.C. Bar Association, stated that as regards South Africa "it is the position of the United States that the provisions of Articles 1, 55, and 56 of the United Nations Charter embody mutual recognition by all parties that every person without distinction is entitled under the charter to respect for his or her human rights and fundamental freedoms." n. 3 cont.

4/ Indeed, American lawyers have been actively involved against apartheid. In 1968 the Association of the Bar of the City of New York, in connection with the trial of the 37 Namibians in South Africa - a trial which was the first application of the Terrorism Act - "resolved to record 'its deep concern and its protest over the actions of the Republic of South Africa, in applying its own law and judicial process extra-territorially, to South West Africans and by prosecuting 37 of them under the Terrorism Act of 1967...This Act offends basic concepts of justice, due process and the rule of law accepted by civilized nations and violates the Declaration of Human Rights.'" (Cited in Joel Carlson, *No Neutral Ground* 208, 1973).

Note should also be made of the work of the Lawyers' Committee for Civil Rights Under Law. The Committee has enjoyed the support of eminent members of the legal profession, including past presidents of the American Bar Association, former Attorneys General and law school deans. In 1967 the Lawyers' Committee established the Southern Africa Project which seeks (1) to ensure that defendants in political trials in South Africa and Namibia receive the necessary resources for their defense and a competent attorney of their choice;(2) to initiate or intervene in legal proceedings in this country to deter actions that are supportive of South Africa's policy of apartheid, when such actions may be found to violate U.S. law; and(3) to serve as a resource for those concerned with the

Constitution.5/ Its entire governmental, political, economic, social and legal structure is predicated on distinctions based on race and color. 6/

This situation of abnegation of the Rule of Law in South Africa calls for the reiteration of the dedication of the American Bar Association to the Rule of Law and specifically for the declaration by the Association of its opposition to the governmentally established and enforced policy of the South African Government of apartheid, for the condemnation by the Association of the most egregious violations of the Rule of Law, for the authorizing of the President of the Association to take further actions, as appropriate, in implementation of this policy, and finally for the encouragement of members of the Association to act in support of this policy.

The imperative for lawyers and for the Association to speak out on this issue may be illustrated by the prominence which the situation of escalating violence in South Africa has attained.7/ On December 10, 1984, President Reagan in a speech

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4/(cont.)/ erosion of the rule of law in South Africa and that government's denial of basic human rights.

The International Commission of Jurists compiled a report "South Africa and the Rule of Law," Geneva, 1960 (hereinafter cited as ICJ Report) "in the hope that world legal opinion will thereby be informed of the profoundly distressing conditions of life in the Union of South Africa and the perilous state of the rule of law in terms of both classic freedoms and social justice."

5/ See Dep't of State Country Reports on Human Rights Practices for 1983, p. 322. [hereinafter cited as Human Rights Report].

6/ See comments in the House Foreign Affairs Subcommittee on Africa Report of Special Study Missions to Africa, The Faces of Africa: Diversity and Progress; Repression and Struggle"(1971), p.141. The Special Study Mission noted that, "With the advent of the United Nations and the dedication of the Charter of the United Nations to the principle of equal rights and self-determination of peoples, a new era of international law dawned. This has been marked by progress in many countries toward the eradication of legal distinctions based on race and color. South Africa is an ignominious exception. While the rest of the world embarked on a course of recognizing the equality and dignity of each man, South Africa has enshrined apartheid into its system of law..."

The Human Rights Report comments that the "83.3 percent of South Africa's population which is not part of the white minority suffers from pervasive discrimination which severely limits political, economic, and social life." Human Rights Report, supra note 5 at 324.

7/ See the sobering Report of the South African Bishops Conference, "Report on Police Conduct During Township Protests (August-1984)".

commemorating International Human Rights Day spoke out on the issue of apartheid by noting that the United States views "racism with repugnance" and urging that South Africa "move toward a more just society." The President said that the administration wanted "the government of South Africa to reach out to its black majority by ending the forced removal of blacks from their communities and the detention, without trial, and lengthy imprisonment of black leaders." 8/

The recently reported position of Senator Lugar, the incoming chairman of the Senate Foreign Relations Committee, in calling for the release of 16 black political prisoners in South Africa is of signal importance in indicating that now is the time for persons and associations dedicated to the Rule of Law to speak out. 9/ Reference should also be made to the December 4, 1984 letter of 35 conservative Republican congressmen to the Ambassador of South Africa to the United States. The letter read in pertinent part:

> "We are, for the most part, politically conservative and as conservatives recognize all too well the importance and strategic value of South Africa. We understand the need for stability both within the internal affairs of your country and your external relationship with the United States. But precisely because we do feel strongly about our mutual interests, we cannot condone policies of apartheid which we believe weaken your long-term interests and certainly our ability to deal with you in a constructive manner. ...
>
> We are looking for an immediate end to the violence in South Africa accompanied by a demonstrated sense of urgency about ending apartheid."10/

One of those 35 congressmen, Congressman Vin Weber, in a column in the December 11 edition of the Washington Post reflected:

> "If conservatives look to freedom as the dominant guiding principle in domestic policies, should we not look for the same in the international area? Therein lies the great challenge inherent in the question of South Africa. . . . The moral implications of supporting an avowedly racist

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8/ Supra note 1, at 2.
9/ N.Y. Times, December 9, 1984, at 20, col. 8.
10/ The letter was signed by the following congresspersons: Vin Weber, Dan Coats, Bill Goodling, John Hiler, Richard Armey, Bob Walker, Robert Dornan, Benjamin Gilman, George Gekas, Barbara Vucanovich, Robert Lagomarsino, Connie Mack, Newt Gingrich, Tom Bliley, Bill Dannemeyer, Bob Livingston, Duncan Hunter, Jim Courter, Bill McCollum, Mike DeWine, Nancy Johnson, Frank Wolf, Mickey Edwards, Lynn Martin, Tom Lewis, Bobbi Fiedler, Steve Gunderson, Chalmers Wylie, Mark Siljander, Ed Zschau, Tom Ridge, Bill Thomas, Bill Clinger, Rod Chandler, and John Rowland.

> government were rationalized away, if not blatantly ignored. But if conservatives are to lead the free world into the 21st century, we must do so on the basis of a policy that has a firm and consistent moral foundation. We must stand firmly for freedom and democracy, and that does not permit us to blind our eyes to a government that denies both to the vast majority of its citizens simply because of the color of their skin." 11/

II. Discussion

Consonant with its undertaking in the 1975 Rule of Law Resolution 12/ affirming its support of the Rule of Law in the international community, the American Bar Association should adopt the proposed recommendation. This recommendation is made pursuant to the reaffirmation in 1983 of the commitment of the Association in Goal VIII 13/ to advance the rule of law in the world and to promote peace and human rights through law.

The recommendation is consistent with the positions of the American Bar Association in support of the ratification by the United States of the significant human rights conventions: the International Covenant on Civil and Political Rights, 14/ the International Covenant on Economic, Social and Cultural Rights, 15/ and the International Convention on the Elimination of All Forms of Racial Discrimination. 16/

The recommendation is also in line with the 1972 ABA resolution urging the Congress to repeal the Byrd Amendment which permitted the United States to import Rhodesian chrome notwithstanding the Chapter VII Security Council decision to

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11/ Washington Post, December 11, 1984, at A19, col. 2-3.

12/ See American Bar Association, Report on the History and Implementation of the Rule of Law Resolution.

13/ See American Bar Association, International Law and Relations (Advancing the Rule of Law Among Nations: The Association's Goal VIII).

14/ In February 1979 the ABA (in Report to the House of Delegates, Section of International Law) adopted a position in support of the International Covenant on Civil and Political Rights, Annex to G.A. Res. 2200, 21 GAOR, Supp. 16, U.N. Doc. A/6316, at 52 (1966).

15/ In February 1979 the ABA (in Report to the House of Delegates, Section of International Law) adopted a position in support of the International Covenant on Economic, Social and Cultural Rights, Annex to G.A. Res. 2200, 21 GAOR, Supp. 16, U.N. Doc. A/6316, at 49 (1966).

16/ In August 1978 the ABA (in Report to the House of Delegates, Section of International Law) adopted a position in support of the International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106, 20 GAOR, Supp. 14, U.N. Doc. A/6014, at 47 (1966).

impose mandatory economic sanctions against Rhodesia. 17/ The preambulatory paragraphs of this resolution noted the treaty obligation to enforce decisions of the Security Council 18/ and commented, inter alia, that the United States considers the rule of law to be the only alternative to the rule of force and that the good faith fulfillment of treaty obligations is central to the rule of law.

This report is consonant with the "Reports on the Trip to South Africa and Zimbabwe" written by some participants of the trip which was sponsored by the International Legal Exchange Program of the Section of International Law and Practice (1982). 19/

17/ In August 1972 the ABA (Importation from Rhodesia, Standing Committee on World Order under Law) adopted a recommendation favoring economic sanctions against Rhodesia. This followed the adoption by Congress in 1971 of the Byrd Amendment to the Strategic and Critical Materials StockPiling Act. 50 U.S.C. Sec. 98-98h which provided that the President could not prohibit the importation of any material that was militarily strategic and critical and that originated in a non-Communist country so long as its importation was not banned from communist countries. This Act conflicted with the Chapter VII measure passed by the Security Council of the United Nations that prohibited all trade with Rhodesia.

18/ It reads in pertinent part: "WHEREAS, Article 25 of the Charter of the United Nations provides that 'The members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter'.", Importation from Rhodesia, supra note 17.

19/ See especially Sec. VI, Findings of the Trip Participants in Reports on the Trip to South Africa and Zimbabwe, International Legal Exchange Program of the Section of International Law and Practice, October 29 to November 6, 1982, [hereinafter cited as ILEX Trip Report], at 51-55. Note also the observation that "South Africa is a terribly divided, racially segregated country in which the legal system has been employed to further the political objectives of apartheid or racial discrimination." The penultimate paragraph of the findings concludes that "to the extent that the laws of South Africa operate to deprive the great majority of its citizens of their fundamental human rights, it becomes a matter not merely of domestic concern within South Africa; it justifiably becomes a concern of the international legal community and of the organized bar in the United States and elsewhere. That concern for human rights under law was expressed as recently as August 1983 when the House of Delegates of the ABA adopted Association Goal No. VIII -- to advance the Rule of Law in the World. The first summary objective in implementing that goal was stated to be: 'Promote the development of international law and practice by fostering research, education and legal initiatives for peace and human rights through law.'"

A. Apartheid

Apartheid is the policy which the 16 percent white minority imposes on the 73 percent African majority to maintain white supremacy. 20/ Apartheid has been found by the International Court of Justice to be a governmentally established and enforced system of preferences, distinctions, exclusions, limitations and restrictions based exclusively on race, color, national and ethnic origin. 21/ It is a fundamental premise that the Rule of Law requires a governmental system that treats all persons as equal before the law. 22/ Apartheid is diametrically opposed to this peremptory norm of non-discrimination. 22A/

20/ Human Rights Report, *supra* note 5 at 322.
21/ *See* paragraph 131 of the International Court of Justice's Advisory Opinion of 21 June 1971 on the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), [hereinafter cited as ICJ Advisory Opinion on Namibia].

22/ *See*: the Universal Declaration of Human Rights, G.A. Res. 217, 3 GAOR, U.N. Doc. 1/777 (1948), which reads in part,"Art. 7. All are equal before the law and are entitled without any discrimination to equal protection of the law..."; Charter of the United Nations, Art. 55 and 56, 59 Stat. 1031, T.S. 993, 3 Bevans 1153 (1945), which reads in part,"... the United Nations shall promote:... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."; South West Africa Cases (Second Phase), [1966] I.C.J. 4,284 (Tanaka, J., dissenting) in which Judge Tanaka concludes, drawing upon every source of international law authorized in the Statute of the International Court of Justice, that "the norm of non-discrimination or non-separation on the basis of race has become a rule of customary international law.... The principle of equality before the law...is stipulated in the list of human rights recognized by the municipal system of virtually every State no matter whether the form of government be republican or monarchical and in spite of any differences in the degree of precision of the relevant provisions. This principle has become an integral part of the constitutions of most of the civilized countries in the world."

22A/ The philosophy of apartheid was explained in the 1953 Report on the U.N. Commission "The Racial Situation in South Africa," ECOSOC Document E/CN.4.949, November 22, 1967, which stated that, "It is the mission of the white race living in South Africa to protect that civilization, 'against attacks from outside and subversion from within.' In other words, though representing a numerical minority, it must at any cost

This recommendation is proposed mindful of the commitment of the American Bar Association to encourage respect for and observance and promotion of human rights and dignity of all men without distinction on the basis of race, color or ethnic origin.

Also apposite here are the words of the Universal Declaration of Human Rights that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" and that, "whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law." 23/

22A(cont.)/ safeguard its position of domination over the coloured races...The best service, therefore, that the whites can render to the nonwhites is to separate them from the white population, to consider them as distinct social and economic groups, and to see that as far as possible, they live in territories, zones, or 'locations' assigned to them as their own." In surveying the official texts of the South African government to ascertain what the policy of apartheid is, Judge Ammoun in his separate opinion of the ICJ Advisory Opinion, supra note 20, at 82, cited statements of various South African prime ministers. Note especially his reference to Dr. Verwoerd's statement to Parliament in 1958 in which he recalled the positions of two other prime ministers: "Dr. Malan said it, and Mr. Strijdom said it, and I have said it repeatedly and I want to say it again: The policy of apartheid moves consistently in the direction of more and more separate development with the ideal of total separation in all spheres."

As its various manifestations demonstrate, the apartheid system represents a deliberate, comprehensive systematic deprivation of the fundamental freedoms inherent in the norm against racial discrimination by its distinctions, exclusions, restrictions and preferences. The International Convention on the Elimination of All Forms of Racial Discrimination, supra note 16, at Art. 1 (1), defines racial discrimination as "...any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

23/ Universal Declaration of Human Rights, supra note 21.

Moreover, the international community has consistently condemned apartheid as a "crime against humanity". 24/ Indeed, the International Convention on the Suppression and Punishment of the Crime of Apartheid has been ratified by 67 states, although it has not been signed or ratified by the United States. 24A/

By adopting this recommendation, the American Bar Association would add its prestigious voice to those of other respected institutions, such as the International Commission of Jurists, 25/ in declaring the repugnancy of apartheid to the Rule of Law.

The U.S. Department of State acknowledges in its Report on Human Rights Practices that:

24/ G.A. Res. 2074 (XX). See also G.A. Res. 2202 (XXI) of December 16, 1966.

The Special Rapporteur for the Human Rights Commission in his report, "Study of Apartheid and Racial Discrimination in Southern Africa" (E/CN.4/949, Nov. 22, 1967) found the laws of South Africa violative of the following fundamental freedoms and human rights: The rule of non-discrimination; the right to take part in Government, freedom of peaceable assembly and association, freedom of opinion and expression, the right to a nationality, the right to seek and enjoy another country's asylum from persecution, freedom of religion, the right to marry and to protection of family life, the right to property, freedom of movement and residence, the right to leave one's country and return, the right to privacy, the right to personal freedom and security, freedom from slavery and servitude, freedom from inhumane and degrading treatment and punishment, the right to a fair trial, the right to an adequate standard of living, the right to rest and leisure, the right to social security, the right to education, the right to participation in cultural life, access to public facilities and accommodations, and the right to a just social order.

24A/ Opened for signature November 30, 1973, entered into force July 18, 1976 (See G.A. Res. 3068 (XXVIII) Ann. UNGA Off. Rec. 28th Sess., Vol. 1, Supp. No. 30 (A/1930) (1973), p. 75; 13 Int'l Legal Materials 51 (1974). Article III provides that international criminal responsibility is to apply to individuals, members of organizations and officials who commit the crime of apartheid as defined in Article II of the Convention. For the United States position that this extension of international criminal jurisdiction requires, inter alia, more meticulous elaboration, see the statement of Amb. Ferguson before the General Assembly November 30, 1973, 1973 Digest of U.S. Practice in Intl. Law 130-132; U.N.DOC A/PV.2185, Nov. 30, 1973, pp. 12-18.

25/ ICJ Report, supra note 4.

> "(r)egardless of whether or not the new Constitution represents reform of apartheid or only its rationalization and modernization, the practice of apartheid remains the basis for the organization of South African society. Apartheid institutionalizes political and economic control by the white minority. Discriminatory laws and practices are woven throughout the fabric of South African society." 26/

The fundamental thesis of apartheid, racial discrimination, is not only antithetical to basic notions of law and justice but is perilous to international peace and security. The United Nations Charter predicates international peace and security and conditions of stability *inter alia* on "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, color, sex or religion." 27/

The right against racial discrimination has been characterized by the International Court of Justice as one of the "basic rights of the human person", and therefore of such importance that "all states can be held to have an interest in their protection; they are obligations *erga omnes*." 28/

The gravity of the situation in South Africa to international peace and security is indicated by the imposition by the Security Council, with the support of the United States, of mandatory sanctions in 1977. 29/ In that resolution 42, the Security Council, *inter alia*:

> *call(ed) upon* the Government of South Africa to abandon the policies of apartheid and discrimination,..., and to liberate all persons imprisoned, interned or subjected to other restrictions for having opposed the policy of apartheid. 30/

1. The Pass Laws

The South African constitution codifies apartheid 31/ and

26/ Human Rights Report, *supra* note 5, at 323.

27/ Charter of the United Nations, *supra* note 21, at Art.1 (3).

28/ The Barcelona Traction, Light, and Power Company (Belgium v. Spain), paragraph 33, I.C.J. 3, 31 (1970).

29/ S.C. Res. 418, 32 U.N. SCOR (2046th mtg.) at 5, U.N. Doc. S/P.V. 2046 (1977).

30/ S.C. Res. 181, 18 U.N. SCOR (1056th mtg.) at 7, U.N. Doc. S/5386 (1963).

31/ "South Africa is a multiracial country whose present constitution codifies the system of apartheid under which the white minority holds a monopoly of power in the country's national political institutions.", Human Rights Report, *supra* note 5, at 322.

under this policy Africans are perceived solely as units of labor and their presence in the urban areas is permitted only to the levels to which labor is needed and is regulated by the influx control and pass laws as well as by the Group Areas Act. 32/

32/ "Blacks' residences and travel are regulated by a system of 'influx control' or 'pass' laws which severely restrict the number of blacks entitled to stay in a given urban area for more than 72 hours at a time. Periodically the police conduct raids or sweeps of the restricted areas during which all passes are checked. All persons illegally resident are arrested and/or transported to their associated homeland." Human Rights Report, supra note 5, at 329."

Note here should be made of the infamous section 10 of the Black (Urban Areas) Consolidation Act, Act No. 25 of 1945. "Section 10 of South Africa's Urban Areas Act limits the number of Blacks who can live permanently in the cities. It states that Blacks not born in a 'white' area may qualify for permanent living rights only if they have worked continuously for one employer for ten years or for 15 years with several employers. A 1968 law restricted the exercise of this right by requiring migrant laborers to return to the homelands for a least one month per year to renew their work contracts. Regulations interpreted this obligatory return as disrupting continuous residence and employment within the 'white' area." South Africa 1983: Reorganizing Apartheid, Southern Africa Project of the Lawyers' Committee for Civil Rights Under Law, 1983 Annual Report.

In May 1983, in a landmark case, the appeals court upheld a Supreme Court decision in the Rikhoto case that migrants who have worked 10 years or more for the same employer or 15 years for different employers are entitled to permanent city residency. In June the Government agreed to implement the decision, but parliament amended the Urban Consolidation Act with the effect of tying the influx of families of resident workers to the availability of housing. In practice, this limits the impact of the decision.", Human Rights Report, supra note 5, at 329.

The Ad Hoc Committee on Forced Labour of the International Labour Organization has made the following finding with respect to the question of forced labor in South Africa: That there exists in South Africa "a legislative system applied only to the indigenous population and designed to maintain an insuperable barrier between these people and the inhabitants of European origin," that "the indirect effect of this legislation is to channel the bulk of the indigenous inhabitants into agricultural and manual work and thus to create a permanent, abundant and cheap labour force" and that in this sense "a system of forced labour of significance to the national economy appears to exist in the Union of South Africa". ("Declaration Concerning the Policy of 'Apartheid' of the Republic of South Africa", July 8, 1964, Geneva ILO.)

It should be further noted that approximately 200,000 persons are arrested each year for pass law offenses. 33/

32(cont.)/

"[C]onditions in South Africa reflect to a considerable degree a special circumstance: a conscious, systematic effort over the years to control black labor, to channel it where it will benefit whites and to raise barriers against it where it is not needed or where it seems to compete with whites." *South Africa:Time Running Out*,The Report of the Study Commission on U.S. Policy Toward Southern Africa [University of California Press and Foreign Policy Study Foundation, Inc., 1981], p.81 [hereinafter cited as South Africa: Time Running Out].

33/ Ramaruno Monama, *Is This Justice?-A Study of the Johannesburg Commissioners' (Pass) Courts* (University of Witswatersrand, 1983).

"Since the beginning of this century, more than 17 million people have been arrested or prosecuted under South Africa's "battery" of pass laws and influx control regulations, according to figures submitted to the *Carnegie Inquiry*. Professor Michael Savage of the University of Cape Town's sociology department said that at least 17,252,146 Africans were arrested for these offences between 1916 and 1982. However, if prosecutions under related poll tax and trespass laws are included, he estimates that more than 26 million Africans have been prosecuted in terms of various influx control laws in this period. (Star 18-4-84). In *1982*, the number of arrests was more than 202,000. In *1983*, 275,934 blacks were *prosecuted* in the Commissioners' Court; under 1% had legal representation; and there were *142,000 convictions*. Some cases were observed to last as little as 90 seconds.", *Violations of Human Rights in South Africa* 1983-84, Working Group Kairos, The Netherlands, July 1984, at p.12, [hereinafter cited as Kairos Report].

"The act [The Blacks (Abolition of Passes and Coordination of Documents) Act 67 of 1952] requires that every African over the age of sixteen be fingerprinted and furnished with a reference book containing the individual's identity card and employment information.

"Self-governing homelands may issue identity documents to their citizens to replace reference books, and the independent homelands now issue passports to their citizens. But under South African law these passports are still treated as reference books-in other words, as passes.

"A policeman may ask an African to produce his reference book at any time, and failure to produce it on demand is a criminal offense punishable by a fine of up to R50 or imprisonment of up to three months."*South Africa: Time Running Out*, *supra* note 32, p.81.

2. The Denial of Political Participation

It must be noted that under the recent constitutional reforms political participation continues to be denied to Africans and is extended to other population groups, Indians and Coloureds, only on a limited and differential basis. 34/ The new Constitution "provides that existing legislation underpinning the legal separation of the races will continue in force." 35/

3. The Homelands Policy

The apartheid policy comprehends both the denial under the South African constitution to 73% of the population, that is, the African citizenry, of the right of political participation in the Government of South Africa and the policy of "separate development". The latter involves the allocation of each African to a tribal "homeland," the denationalization of the Africans and their relegation to specified "homelands",

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34/ Human Rights Report, *supra* note 5, at 322.

35/ *Id*.

The report signed by nearly all of the participants of the ILEX sponsored trip to South Africa commented:

> As presently structured, the proposals, with their preponderant emphasis on white control, merely complete the sophisticated symmetry of racial discrimination or apartheid. Coloureds and Asians are given token representation in a white dominated parliament while Africans are totally excluded altogether. For Africans, the new constitution is based on an unasserted but nonetheless devastating reality that no African is to be considered a citizen of the state for which the constitution has been drafted. Indeed, the exclusion of Africans has been based on 'cultural differences' and 'divergent political objectives.' All Africans will belong to one of ten homelands which, when given independence by South Africa, will mean the loss of their South African citizenship. When questioned by members of the delegation, the Council explained that the homelands or 'states' were established to allow each of South Africa's numerous tribes to develop separately and independently. The government has never ascertained whether Africans want to exercise the right to separate development and, indeed, ignores the continuing call of the black community for a unitary state for all South Africans. While the government asserts the right of the various African groups to develop separately, it does not assert the same right to the various white groups which appear to be of greater diversity, cultural experience and background than many of South Africa's black tribes.", ILEX Trip Report, *supra* note 19, at 50-51.

whose total area comprises 13% of the land area of South Africa, all for a racially discriminatory purpose of achieving a "white South Africa". 36/

With the exception of South Africa, no state has recognized the "independent" homelands as independent states 37/ The policy of the United States Government in harmony with that of the other states of the international community is opposed to the recognition of these areas. 38/

a. Denationalizations and Deprivations of Citizenship

The homelands policy contemplates planned denationalization of the disenfranchised majority by the "independence" of each homeland in order to effectuate the denationalization of all Africans both those who reside in the homeland areas and those who reside in the urban areas. 39/

36/ "All homelands would become independent states; the entire African population of the Republic would be granted political rights and citizenship in these states; consequently, there would ultimately be no African citizen of the Republic of South Africa requiring accommodation in the political order of South Africa itself." South Africa:Time Running Out, supra note 32, at p. 50.

37/ Human Rights Report, supra note 5, at 332 section 2(d).

38/ Eagleburger Statement, supra note 2.

39/ The majority of participants of the ILEX trip report noted, "The most disturbing thing that the participants learned was that the South African Government is embarked on a massive effort to denationalize nearly 70 percent of its population in the name of furthering and achieving the concept of racial discrimination embodied in the doctrine of apartheid. What South Africa has done, and continues to do, is to deprive African South Africans of their citizenship by the process of denationalization. Despite the fact that no nation has recognized any of the homelands, nearly 10 million people have thus far lost their nationality with millions more to be denationalized in the immediately foreseeable future. The unilateral, massive, wholescale exchange of a valid, recognized South African nationality for that of a nationality of a non-recognized homeland creates a stateless person for whom the international community is ultimately responsible. The implications of this policy and the effects that it has had, and is having on black South Africans was of grave concern to the participants and warrants the most urgent study." ILEX trip Report, supra note 19, at 52.

Such denationalization is contrary both to two peremptory norms, ius cogens, of international law, the norms against racial discrimination and involuntary denationalization, and to the principle of self-determination. 40/

b. Relocations and Removals

In pursuance of the bantustan (homelands) policy, the South African Government has carried out the internationally decried policy of relocations and removals of Black people from

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40/ "Denationalization on racial, ethnic, religious, or other related grounds is particularly notorious because of its close association with Nazi and fascist atrocities...The emerging peremptory norm (jus cogens) of nondiscrimination will, as previously noted, make unlawful many types of denationalization. In sum, the whole complex of more fundamental policies for the protection of human rights, as embodied, for instance, in the United Nations Charter, the Universal Declaration of Human Rights, the International Covenants on Human Rights, and other related instruments and programs, global as well as regional, may eventually be interpreted to forbid use of denationalization as a form of 'cruel, inhuman and degrading treatment or punishment.'" M.S. McDougal, H.D. Lasswell and Lung-chu Chen, Human Rights and World Public Order: The Basic Policies of an International Law of Human Dignity [Yale University Press, New Haven and London, 1980], pp. 906,909.

The eminent South African professor, John Dugard, in commenting on the Transkei and Bophuthatswana, has said that "both the Status of Transkei Act and the Status of Bophuthatswana Act provide that on independence a wide range of persons, ethnically, linguistically or culturally connected with those states, ceased to be South African nationals. Both statutes are careful to avoid any express suggestion of denationalization on the ground of race, but there can be little doubt that they are intended to apply to Africans only, and this is borne out by their implementation in practice.

These statutes offend the norm of contemporary international law prohibiting denationalization measures based on racial or ethnic grounds; a norm which derives its validity from the universal condemnation of the 1941 Nazi decree denationalizing Jews and from modern human rights instruments. Denationalization is widely deplored in the international community as is shown by the statement of Hannah Arendt that:

> "One is almost tempted to measure the degree of totalitarian infection by the extent to which the concerned governments use their sovereign right of denationalization." (The Origins of Totalitarianism [3rd ed, 1967] 278)

"black spots" in white-designated areas 41/ and 3.5 million people have been removed in furtherance of the homelands policy. 42/ At least 1.4 million people have been forced off white-owned farms since 1960. 43/ Some 1.3 million have been "endorsed out" of city areas and into the bantustans since 1956. 44/ Over 400,000 have been forced out of long established homes in so-called Black spots to permit those areas to be consolidated with adjoining white areas. 45/

40(cont.)/(Independent Homelands - Failure of a Fiction, 1979 Presidential Address [Johannesburg, S.A. Institute of Race Relations, 1979], p. 14.

41/ "Since the pattern of group residence sought by the developed apartheid system does not correspond to the actual location of various groups that existed when apartheid was set up, the Government has forcibly removed many people from their homes. These forced resettlements of black and colored 'squatters' in urban areas and removal of black settled communities, 'black spots,' from designated white areas to black tribal homelands is a major feature of government policy. Such removals often result in violence, as in the October 1983 attempt by officials to move sqatters from Katlehong."Human Rights Report, supra note 5, at 328.

42/ See Kairos Report, supra note 33, at 4 et seq.

43/ Goler Butcher, Testimony Before The House Foreign Affairs Subcommittees on Africa and on International Economic Policy and Trade: U.S. House of Representatives [on behalf of the Lawyers' Committee for Civil Rights Under Law on February 9, 1982], 29 How. L.J. 166 (1983), [hereinafter cited as Testimony].

44/ Id.

45/ Id.

Over half a million have been forced to leave their homes in urban areas 46/

B. The Security Legislation

The security laws 47/ of the South African Government

46/ The ILEX Trip Report, supra note 19, at 41, comments that the "Black Land Act of 1913 (Act No. 27 of 1913) and the Development Trust and Land Act of 1936 (Act No. 18 of 1936) set aside 13% of the total area of South Africa for the exclusive occupation of Africans. Under the 1913 Act, certain areas were 'reserved' for Africans only, while at the same time the Act made it unlawful for an African to acquire land anywhere outside of the reserves. The territory that was set aside consisted of scattered and fragmented pieces of land varying greatly in size and density. Under the 1936 Act, land owned by Africans outside of the reserve system, particularly 'black spots' -- land surrounded by white farms -- could be expropriated by the South African government in furtherance of its policy of separate development."

47/ The Internal Security Act, Act No. 74 of 1982, largely consolidated the security legislation. "The Act is divided into seven chapters, 74 sections and 4 schedules, and consolidates in whole or in part 28 previous security laws. Chapter One establishes a Director of Security Legislation who is responsible for performing the functions assigned by the Act. Chapter Two sets forth the measures that are to be taken against organizations and publications, including declaring certain organizations as unlawful and prohibiting certain publications should the Minister of Law and Order determine that they are engaged in 'activities which endanger or are calculated to endanger the security of the state or the maintenance of law and order.' Chapter Three is entitled 'Measures in respect of certain Persons', and includes provisions for restrictions on membership in organizations and public bodies, 'banning', or the restriction of an individual to a certain place, restrictions on attending gatherings and dissemination of speeches, publications and utterances. In addition, the chapter provides for internment or preventive detention for purposes of interrogation or for holding as witnesses. Chapter Four is the first legislative attempt to provide for a board of review and the inspection of detainees in police custody. Chapter Five establishes certain restrictions in connection with various gatherings and abrogates the right to public assembly without government authority. Chapter Six enumerates various offenses and penalties while Chapter Seven provides for the rules of procedure, jurisdiction of courts and admission of evidence in matters involving the Act." ILEX Trip Report, supra note 19, at 33-34.

and the practices pursuant to them, i.e. bannings, disappearances, detentions without charge and procedural rules in derogation of due process 48/, are contrary to the rule of law and violate the human rights of all citizens of South Africa, whatever their race, color, national or ethnic origin. 49/

The Report issued by the majority of participants on the Trip to South Africa and Namibia from the International Legal Exchange Program of the Section of International Law and Practice (hereinafter the ABA Report on the Trip to South

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47(cont.)/ These new security laws were introduced following the February 1982 report of the Rabie Commission; The new Act replaces the Terrorism Act No. 83 of 1967 and other security legislation but retains many of the infamous provisions of the earlier laws. For example, Section 29 of the Internal Security Act contains an enlarged version of the Terrorism Act. In regards to the Terrorism Act, Judge Ammoun commented that the Act "...intended to enforce apartheid through severe repression, which violates the most sacred principles of criminal law, namely the nullum crimen sine lege, the rules relating to the definition of principal and accessory, the non-retroactivity of penal laws and of penalties, the presumption of innocence, and the rule of res judicata." ICJ Advisory Opinion on Namibia, supra note 20, Separate Opinion at 83.

48/ The Terrorism Act "...obliged the detainee to prove his innocence beyond reasonable doubt. It further provided that once charged, the attorney general could issue a certificate prohibiting any court from granting bail. The attorney general could also determine what court could hear the matter and where and when that court would sit. Should any defendant succeed in being acquitted, the act provided that the defendant could be redetained and charged again for the offenses arising out of the actions he had already been charged with. Furthermore, the act provided a guilt-by-association clause, joining all defendants together and holding all of them responsible for any criminal action of any defendant or of any named member of the organization to which the defendant belonged." No Neutral Ground, supra note 4, at 154.

See also Davis, Infringements of the Rule of Law in South Africa, Review of the International Commission of Jurists (Dec. 1971).

49/ The basic inconsistency between the Rule of Law and the South African Security Laws was condemned in 1967 by the reference of the U.S. Ambassador to the U.N. to "the atrocious Terrorism Act under which 37 South West Africans were charged and brought to trial, under conditions repugnant to all who believe in justice under the law." No Neutral Ground, supra note 4, at 207.

Africa) makes the following comment on the basic security legislation, the Internal Security Act:

> By and large, the entire Act has been structured so as to be outside of the scope and framework of the judicial system. Chapter Four provides for a right of appeal from some of the provisions of the Act; however, it is an appeal to a review board which is a government appointed tribunal as opposed to a court of law. While the review board gives the impression of objectivity, it does not address the essential issue of the unfettered discretion given the Minister of Law and Order and the Commissioner of Police. By the time one has legal recourse to the review board so as to determine whether the actions of the government are arbitrary or capricious, more than six months of detention will have passed. 50/

1. Bannings

The South African government has virtually unfettered powers to silence opposition by executive fiat through the power conferred upon the Minister of Law and Order to issue banning orders, which are not subject to court review, against individuals, organizations and publications. Banning 51/ includes restriction to, or exclusion from, certain areas (extending even to house arrest), prevention of attendance at any gathering (with gatherings being defined to include meetings of two or more persons), prohibition from being quoted or published. Although a banning order is not subject to review by the courts, the violation of a banning

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50/ ILEX Trip Report, *supra* note 19, at 34-35.

51/ Prior to the Internal Security Act the authority for banning was the Suppression of Communism Act of 1950 In a 1972 study commission on "Law, Justice and Society",Report of the Legal Commission of the Study Project On Christianity in Apartheid Society (SPRO-CAS Publication No. 9 1972)(hereinafter cited as SPRO-CAS), the chairman, Jack Unterhalter writes:"Not only is the treasure of the law and of our values thus wasted. There has developed with this apartheid legislation, and to reinforce it, a trend that is counter to our modern understanding of due process of law - a fair investigation by an impartial tribunal of evidence openly given and tested in regard to any matter affecting the liberty or other interest of a person concerned. Thus persons prohibited from attending gatherings in terms of the Suppression of Communism Act and confined to magisterial districts or house arrested, are proscribed by the Minister of Justice without being told the acts [forming the basis] for his decision, nor being able to test the credibility of the informant, nor to offer evidence to deny what the informer has said." (p.17) order is a criminal offense and so punishable. 52/

Those detained and banned represent a cross-section of society: students, trade unionists, journalists, church and community leaders. 53/

2. Disappearances

As noted in the State Department Human Rights Report, "South African law does not require notification of a detainee's family, lawyer, or other person when an individual is detained or released, and people have simply disappeared into policy custody for long periods." 54/

3. Detentions Without Charges or Trial

The Internal Security Act authorizes detentions without charge or trial for certain offenses for varying conditions and periods, in some cases unlimited periods. 55/

52/ "As 1981 ended, government figures released in Parliament revealed that 179 people continued in detention on that date under various security laws (up from ninety-two detained on that date a year ago); 520 political prisoners were serving sentences under security laws; and approximately 160 remained on that date restricted under banning orders. . . . Statistics available for the twelve months of 1980 reveal that in that year more than 965 people were detained under one or more of South Africa's security laws, thirty-six of whom were sentenced to a total of 227 years imprisonment for offenses under South Africa's Terrorism Act, which has been universally condemned as a gross violation of international standards of due process." Testimony, supra note 43, at 162-63.

53/ *Id.* at 163.

54/ Human Rights Report ,*supra* note 5, at 326.

55/ *Id.* at 327. The Internal Security Act renews the powers of the authorities "to hold people indefinitely in preventive detention and to detain *incommunicado* potential witnesses in future political trials. However, provision was made for fortnightly visits to Section 29 detainees by a magistrate, a doctor and an Inspector of Detainees appointed by the Minister of Justice. Procedures were also established for reviewing the cases of Section 29 detainees after six months' detention. A board of Review was set up to which Section 28 detainees, those in preventive detention, and banned people might apply, but the Minister was not required to implement the board's recommendations. Amnesty Int'l Report (1983) (hereinafter cited as Amnesty) at 77-78.

4. Detention Without Access to Counsel or Habeas Corpus

Interrogation of persons held under the security laws may be done without access to counsel. 56/ The security legislation in practice nullifies the principle of habeas corpus. 57/

5. Torture and Deaths in Detention

The policy of incommunicado detentions pursuant to these security laws authorizes a system of detentions removed from judicial or public scrutiny and leads to torture and deaths in detention. 58/

56/ "Because security detainees may be interrogated without access to counsel, they may admit to actions or charges the implications of which they may not fully understand. However, such statements often are not admissible in court. Many trials are held "in camera" or in distant parts of the country making it difficult or impossible for family or others to attend. If deemed necessary, by the court, witnesses may testify without being publicly identified. Security and criminal trials are held before regular courts which are generally regarded as independent of executive or military control, although all judges and practically all magistrates are white and thus the black population has virtually no representation in the judicial system." Human Rights Report, *supra* note 5, at 327.

57/ *Id.*

58/ "Between 1963 and 1978, 50 persons died in detention and their deaths especially where autopsies occurred in the presence of representatives of the deceased were widely attributed to police torture. Following the extraordinary exhibition of police methods and attitudes in the inquest in 1977 into the death of Steve Biko, deaths in detention appeared to have dropped away. But in December 1981, Tshifhiwa Isaac Muofhe, a former member of the Black People's Convention, died two days after he and nine others had been detained by security police in the bantustan of Venda. Muofhe was a member of the Lutheran church. Four of the nine others, who are still detained, are members of the Lutheran clergy. They are reliably reported to have been brutally assaulted and taken to the hospital." Testimony, *supra* note 43, at 163 - 164.

"In 1982 Neil Aggett became the first white person to die in detention. Aggett, "a doctor working as a trade union official, was found hanged in his cell at the Johannesburg security police headquarters on 5 February. He had been detained in November 1981 when a number of students, officials of black trade unions and other critics of the government were arrested by security police. He was held incommunicado under section 6 of the Terrorism Act and was not charged. Following Neil Aggett's death, detainees who had been in custody with him

The common practice of torture to secure admission of guilt is well attested from court records and evidence of lawyers--one recorded that seventy percent of his clients displayed evidence of assault.59/

6. The Use of the Judicial Process to Enforce Apartheid

By its very nature apartheid has a "debasing effect" upon all aspects of the legal system and legal profession in South Africa. 60/

58/(cont.)/ alleged that he had been assaulted and subjected to electric shock torture by security police and, shortly before his death, interrogated continuously for more than 60 hours. At an inquest eyewitnesses testified to his ill treatment and alleged that they, too, had been tortured by security police. Lawyers representing Neil Aggett's family acknowledged that he had died by suicide but argued that it had been induced by ill-treatment. An Amnesty International observer attended part of the inquest in October. In late December the magistrate dismissed the evidence of former detainees, accepted the account given by the security police, and absolved them from any responsibility.

"In early August Ernest Dipale, aged 21, was also found hanged in a cell at the Johannesburg headquarters of the security police. No inquest had been held by the end of 1982." Amnesty, *supra* note 54, at 78.

The Department of State, in its Human Rights Report, notes "Cases of deaths in detention or at the hands of police, prison, or security police elements included six known instances with nine deaths in 1983." Human Rights Report, *supra* note 5 at 324. For a detailed investigation into inquests, court transcripts, and parliamentary inquiries into deaths in detention, *see* the Report of the Lawyers Committee for Civil Rights Under Law, "*Deaths In Detention and South Africa's Security Laws*" (September 1983).

59/ Testimony, *supra* note 43 at 165.

60/ *See* SPRO-CAS, *supra* note 51 at 1. Professor John Dugard, writing as Secretary of the 1972 Legal Commission of the Study Project on Christianity in Apartheid Society, and Peter Randall, Director of SPRO-CAS, state, *inter alia*, in their introduction to the Report of the Commission that the common theme of the essays in the Report is the debasing effect apartheid has upon the law, the courts, the legal profession and the officers of the law."

Note also the observations of the Study Commission on U.S. Policy Toward Southern Africa: "The formal constraints on the South African courts as defenders of civil liberties are not limited to the curbs placed on them by the laws affecting rights. The constraints also include the courts' lack of

The ILEX report on the Trip to South Africa and Zimbabwe is pertinent here:

> "The laws of apartheid can broadly be divided into two categories: Those laws which prescribe the personal, social, economic, cultural and educational status of the individual in society; and those laws which construct the institutions of separate development and determine the political status of the individual. Because both sets of laws are enacted by Parliament which makes no pretenses at representing all of the country's people; and because the judiciary is required to uphold such legislation without reviewing or commenting on its legality or adherence to universally recognized standards of justice and decency, South Africa's legal system has become a proper subject for international scrutiny." 61/

60/(cont.)/ constitutional standing as protectors of rights in South Africa. The principle of parliamentary sovereignty and the absence of a bill of rights enforceable by the courts put the South African judiciary at a marked disadvantage compared with American courts. . . . One explanation of why the courts have not taken a stronger libertarian stand is that some judges regard the infringements of civil rights as necessary for state security. Allen Drury, in his book, A Very Strange Society, records an interview with judges who evidenced unconcern about the application of the Internal Security Act. On the other hand, even judges critical of security legislation frequently do no better than colleagues who favor the laws because they regard judicial intervention as undesirable meddling in politics." South Africa: Time Running Out, *supra* note 32 at 77.

61/ *See* ILEX Trip Report, *supra* note 19 at 15. Further the reluctance of the courts to push the outer limits of the restrictive security laws is indicated in the following remarks of Professor Dugard: "South African judges have less power than their American counterparts. They have no competence to declare invalid acts of Parliament which offend the basic freedoms of the individual despite the fact that these may be regarded as common law rights or constitutional conventions. Section 59 (2) of Republic of South Africa Constitution Act places this beyond all doubt in providing that: 'no court of law shall be competent to inquire into or to pronounce upon the validity of any act passed by Parliament . . . .' . . . Although it is clear that the judiciary has acted with integrity and impartiality, their performance sometimes has been disappointing to natural lawyers in the interpretation of those laws which most seriously offend the foundation of our legal order, the detention-without-trial laws. . . . . There are other cases in which statutes have been interpreted in favour of the executive and in which inadequate consideration has been given to those basic rights which, according to Centlivres C.J., are to be regarded as 'constitutional

The conduct of political trials shows evidence of increasing State interference in the judicial process. 62/ The Rabie Commission was appointed in 1979 to investigate internal security legislation in response to criticism that it was impossible for political prisoners to get a fair trial. Many arguments in court over the admissibility of statements obtained under duress led to the amendment of the Criminal Procedures Act in 1979, so that now admissions of guilt are to be assumed to have been freely given. In this respect, the judicial process is clearly weighted in favor of the State. Increasingly severe sentences for convicted political prisoners appears to mark a determination on the part of the South African government to use the ultimate weapon of its judicial process to suppress political opposition. 63/

61/(cont.)/ conventions'. . . . The judges have failed to use their interpretative powers to the full in respect of discriminatory legislation and harsh security laws.". SPRO-CAS, supra note 51 at 24, 26, and 27.

Professor Dugard further notes, "The judiciary's passive attitude towards legislation contrary to the South African legal tradition is largely shared by the practising legal profession. This is apparent from its lack of organized opposition to racial legislation which offends the principle of equality before the law or to the detention-without-trial laws. Universal and unequivocal condemnation of such abhorrent measures as section 6 of the Terrorism Act was surely to be expected from a profession proud of its legal heritage. Yet, with certain exceptions, this has not been forthcoming. The most notable exception is the Johannesburg Bar which condemned both the 90-day and the 180-day detention law when they were first introduced. Although it failed to respond to the Terrorism Act when it was passed in 1967 it did later condemn it in the most vigorous terms when its full horrors became apparent . . . . The incorporated law society of Natal, too, has made its attitude clear and in 1970 it reaffirmed its abhorrence of any statute denying the due process of law, interfering with the presumption of innocence of an accused person or permitting interference with personal liberty without access to a court of law. . . . Other branches of the organised profession have 'spoken out' on several occasions. Id. at 29 - 30.

62/ Undersecretary of State Eagleburger noted in his June 1983 statement, "In recent years the power of the courts has been circumscribed by new acts of parliament and police practices which remove from the courts the ability to review executive action." Eagleburger statement, supra note 2 at 4.

63/ See Testimony, supra note 43 at 164-165.

The Human Rights Report of 1983 of the U.S. Department of State points out further fundamental deficiencies in the South African government system with respect to the denial of a fair public trial 64/ and arbitrary interference with privacy, family, home or correspondence, as well as regarding freedom of speech and press 65/, freedom of peaceful assembly and association, and freedom of movement within the country, foreign travel and emigration. 66/

The security laws curtail and infringe the civil liberties of all persons in South Africa, black or white.

C. Namibia

The International Court of Justice has declared that the application of apartheid to Namibia is a "flagrant violation of the purposes and principles of the Charter".67/

64/ Human Rights Report, *supra* note 5, at 327.

65/ *Id.* at 327-28.

66/ *Id.* at 332.

67/ In response to the South African request to provide the Court with information as to the objectives and purposes of its policy of apartheid or separate development, the Court responded in the concluding paragraphs of its 1971 Advisory Opinion on Namibia, *supra* note 21, at 46, in paragraphs 129, 130 and 131:

> The Government of South Africa having made this request, the Court finds that no factual evidence is needed for the purpose of determining of whether the policy of apartheid as applied by South Africa in Namibia is in conformity with the international obligations assumed by South Africa under the Charter of the United Nations. In order to determine whether the laws and decrees applied by South Africa in Namibia, which are a matter of public record, constitute a violation of the purposes and principles of the Charter of the United Nations, the question of intent or governmental discretion is not relevant; nor is it necessary to investigate or determine the effects of those measures upon the welfare of the inhabitants.
>
> It is undisputed, and is amply supported by documents annexed to South Africa's statement in these proceedings, that the official governmental policy pursued by South Africa in Namibia is to achieve a complete physical separation of races and ethnic groups in separate areas within the

and that the continued occupation by the South African Government of Namibia is in violation of international law. 68/

The position of the United States Government in affirmation of the action of the United Nations General Assembly of terminating the mandate 69/ -- a resolution which the United States supported -- and in support of the illegality of the introduction of apartheid into Namibia is cogently set forth in the Written Statement of the United States to the International Court of Justice, submitted in November 1970 in the nature of an amicus brief for the Court in its consideration of the 1971 Advisory Opinion. 70/

67/(cont.)/ Territory. The application of this policy has required, as has been conceded by South Africa, restrictive measures of control adopted and enforced in the Territory by the coercive power of the former Mandatory. These measures establish limitations, exclusion or restrictions for the members of the indigenous population groups in respect of their participation in certain types of activities, fields of study or of training, labour or employment and also submit them to restrictions or exclusions of residence and movement in large parts of the Territory.

Under the Charter of the United Nations the former Mandatory had pledged itself to observe and respect, in a territory having an international status, human rights and fundamental freedoms for all without distinction as to race. To establish instead, and to enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, color, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purpose and principles of the Charter.

68/ The Court held, *inter alia*, that "the continued presence of South Africa in Namibia, being illegal, South Africa is under obligation to withdraw its administration from Namibia immediately and thus put an end to its occupation of the Territory." *Id*. at 46, para. 133.

69/ General Assembly Resolution 2145 (1966).

70/ In its Written Statement, the United States argued:

> "A. The United Nations validly terminated the rights and authority granted to South Africa under the Mandate of 17 December 1920. The Mandate was a treaty in force and South Africa was legally obligated to carry out its provisions in good faith. Although there was no case brought before the Council of the League alleging that a mandatory had breached its obligations, had such a breach

The United States supported the Security Council Resolution 71/ accepting the Opinion of the Court.

D. The Harassment and Intimidation of Attorneys

On the brighter side of this gloomy picture is the fact that there are lawyers in South Africa and Namibia who are striving to uphold human rights and fundamental freedoms under tremendous difficulties. Many are subjected to varying degrees of isolation and intimidation, harassment and consequential loss of public and private clients. 72/ Special mention should be made of the obstacles faced by Black attorneys. 73/

It is submitted that communications from the American Bar Association in firm support of the Rule of Law and of fundamental human rights would greatly hearten the Bar Associations in South Africa and Namibia. This would be consonant with the belief of the Association in the

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70/(cont.)/ been established during the League period, the Council would have had the authority to terminate the rights of the Mandatory. The United Nations succeeded to this power. In a number of respects, namely, by refusing to submit reports and to transmit petitions of the inhabitants of the Territory, by systematic rejection of recommendations of the General Assembly and the Security Council with respect to the Administration of the territory and by the application of apartheid in Namibia, South Africa materially breached its Mandate obligations. In the light of the failure of other measures taken over nearly two decades to induce South Africa to cease its material breaches, the General Assembly reasonably exercised its power to revoke South Africa's rights and authority as Mandatory by resolution 2145 (XXI). The Assembly was also competent to assume the functions of administration under the Mandate of 17 December 1920.

"B. South Africa no longer has any rights in Namibia under the Mandate; there is no other legal basis for its continued presence in the territory. South Africa is therefore, in illegal occupation of Namibia."

71/ Security Resolution 301 (1971).

72/ *See* ILEX Trip Report, *supra* note 19 at 27.

73/ The Black South African attorneys are handicapped by all the usual accoutrements of apartheid, pass laws, curfews and group area laws which have a crippling affect on their ability to have an office in an urban areas and to provide legal represention to the Black majority.

independence of lawyers and in the need for an independent judiciary. Moreover, it would be encouraging to the South African and Namibian lawyers often working at great personal sacrifice in the defense of individual clients charged under the apartheid and/or security laws.

CONCLUSION

The recommendation to the House would reaffirm and implement the commitment of the American Bar Association to the Rule of Law internationally, to the advancement of the Rule of Law in the world and to the promotion of peace and human rights through law.

Respectfully submitted,

J. David Ellwanger, Chairperson
Section of Individual Rights
and Responsibilities

Robert F. Drinan, Chairperson
Standing Committee on World Order
Under Law

February, 1985

Senator HEINZ. Now I'd like to turn to Reverend Sullivan, unless any of my other colleagues have any remarks they would like to make. Senator Proxmire.

Senator PROXMIRE. Yes, I'd like to just say that, No. 1, I would appreciate it, Mr. Chairman, if you would permit a letter from the president of Wellesley College supporting the Kennedy-Weicker bill to be included in the record.

Senator HEINZ. Without objection.

OPENING REMARKS OF SENATOR PROXMIRE

Senator PROXMIRE. And I also would like to say how delighted and impressed I am that Mr. Phillip Lacovara, representing the American Bar Association, has submitted a statement which supports sanctions with respect to South Africa. It doesn't support any particular bill, but it does support sanctions and I think that's extremely important.

I'll tell you, the ABA was very, very helpful to us when they changed their mind on the genocide convention. It made all the difference in the world. So it's good to have this remarkable organization supporting sanctions.

I have an opening statement that I will not make because of the time limitation, but I want to add my words to the welcome that the chairman has given to Rev. Leon Sullivan. I've heard him a number of times over the years. He's been an inspiration to all of us and I think the chairman is exactly right in saying that Mr. Sullivan more than any other individual by far has kept this issue alive and has prodded our conscience and put us in the position where we are in now, and I think that means that we are going to act and act effectively and do something about changing that apartheid system in South Africa.

[The complete prepared statement follows:]

Opening Statement of Senator William Proxmire

Today we have the last in a series of three hearings on S. 635, the Anti-Apartheid Act of 1985. Since our last hearing on May 24, there have been two very significant developments dealing with the issue of U.S. policy toward the racist South African government.

On June 4, the Senate Foreign Relations Committee reported out, by an overwhelming bipartisan vote of 16-1, an amended version of Senator Lugar's bill S. 995, which calls for the imposition of economic sanctions against South Africa. That bill severely restricts: (1) New bank loans to the Government of South Africa; (2) nuclear exports to South Africa and (3) sales of computers to any Government agency there enforcing apartheid. It also mandates that American companies presently in South Africa adhere to the Sullivan principles. Finally it calls on the President to recommend additional sanctions, including a ban on new investment, if the South African Government does not make significant progress in dismantling its apartheid system within 18 months. The action by that committee is certainly a severe rebuke to the administration and its discredited policy of constructive engagement.

On June 5, the House of Representatives passed H.R. 1460, a bill similar to S. 635 that is before this committee, by a vote of 295 yeas to 127 nays—with over 50 Republicans voting for the 5 sanctions in that bill.

For those of us who want to pressure South Africa to change its evil apartheid system, without putting at risk the perilous livelihood of its oppressed blacks, these are encouraging developments. Let me emphasize again that S. 635 and H.R. 1460, the bill passed by the House, are not disinvestment bills. The main difference between them and the bill reported by the Foreign Relations Committee is that they ban new investment and private bank loans to South Africa, while the Lugar bill does not. Another difference is that S. 635 and H.R. 1460 do not mandate the Sullivan principles, while the Lugar bill does. I support mandating those principles and S. 147 the bill I introduced on January 3 of this year had a provision providing for that.

That brings us to the subject of today's hearing. Our final witness reminds me of the story of the Marriage Feast at Cana—for we truly have saved the best wine for the last. Reverend Sullivan's accomplishments in helping blacks in South Africa have won him international acclaim. He originally wanted American companies to leave South Africa so they would not continue to make excessive profits off of cheap labor, the lack of worker's rights and segregated employment practices. When he found he couldn't accomplish that he pressed forward with establishing a code for United States companies that would at least ensure they act against racial discrimination in their own operations in South Africa, and take a stand against apartheid. Thus was born the Sullivan code in March 1977, with 12 companies adhering to it. Now we have about 130 of the 280 United States companies in South Africa adhering to that code and bettering the lives of 70,000 blacks.

There is nothing in S. 635 that prevents American companies from continuing to better the lives of their South African employees. They are not being required to withdraw from that country by our bill. The Reverend Sullivan has already written to me endorsing S. 635, so he sees no incompatibility between its provisions and having American companies adhere to the Sullivan code.

S. 635 is aimed at the South African Government, not American companies doing business there. It is designed to send a strong signal that the dismantlement of apartheid must begin. Adoption of this legislation is needed to show that the Government of the United States will no longer just condemn apartheid while continuing business as usual. To send this message is right and in our national interest.

I will continue to push for enactment of S. 635 and look forward to hearing from a man I admire for his fine reputation that has preceded him before our committee. I welcome you, Reverend Sullivan.

Senator Heinz. Are there any other statements by any members of the committee?

Senator Dixon. In the interest of brevity, I will put mine in the record, Mr. Chairman.

Senator Heinz. Without objection, Senator Dixon, so ordered.

[The complete prepared statement follows:]

STATEMENT OF SENATOR ALAN DIXON

Mr. Chairman, I am extremely pleased to see that we have the distinguished author of the Sullivan principles, Rev. Leon Sullivan before the committee today. I would like to take this opportunity to commend him for his tireless and outstanding efforts. He has my respect and my admiration; the Sullivan principles are responsible for improving the lives of tens of thousands of blacks, Asians, and others suffering under apartheid, and provide a crucially needed impetus toward ending that abhorrent system.

I am pleased to see that the Senate Foreign Relations Committee has reported legislation to the Senate that would put the Sullivan principles—which are now only advisory—into law, which will, I hope, make their operation even more effective. That bill also forbids: One, new bank loans to the South African Government, two, nuclear exports to South Africa, three, sales of computers to agencies enforcing apartheid there, and four, further investment by United States firms in South Africa if the Government does not make significant progress toward dismantling apartheid within the next 18 months.

This committee also has before it legislation which is even stronger than the bill reported by the Foreign Relations Committee, and a very tough bill has passed the House of Representatives by an overwhelming 295 to 127 vote.

These actions clearly demonstrate the bipartisan desire in both the Senate and the House to pressure South Africa to end apartheid. It also clearly indicates that Republicans and Democrats in both the Senate and the House believe that the administration's so-called constructive engagement policy has not worked and should be abandoned.

I look forward to hearing Reverend Sullivan's testimony and his recommendations for legislative action. It is clear that the time to act is now. I look forward to working with my colleagues to ensure that the Senate quickly acts on a reasonable, effective legislative package that leaves no doubt where the United States stands on the question of apartheid, and which expresses that in a concrete and meaningful way.

Senator **HEINZ**. Senator Gorton.

Senator **GORTON**. No statement.

Senator **HEINZ**. Senator Mattingly.

Senator **MATTINGLY**. No statement.

Senator **HEINZ**. Very well.

Reverend Sullivan, at your pleasure. Welcome again.

STATEMENT OF REV. LEON H. SULLIVAN, MINISTER, ZION BAPTIST CHURCH, PHILADELPHIA, PA; AUTHOR OF THE SULLIVAN PRINCIPLES

Reverend **SULLIVAN**. Thank you, Senator Heinz. It's always a privilege and pleasure to see you and I'm happy to be here with your colleagues.

I have a brief statement and then I will be happy to respond to questions.

I welcome the opportunity to bring this testimony before this important Senate Banking Committee.

EFFECT OF MULTINATIONAL COMPANIES IN SOUTH AFRICA

The question of apartheid is a tragedy in the world and we must take the lead in America to bring about its abolition. My main interest here has to do with the effect of multinational companies on the ending of apartheid. Multinational companies in South Africa, along with other influential institutions and thrusts, can be a major force in the liberation of blacks in that nation. However, for this to happen, American and other outside companies doing business in South Africa must be pushed to the utmost to eliminate all racial discrimination in their own operations and to use their great strength to help persuade the South African Government to end all apartheid laws.

American companies that fail to do so should be compelled to leave South Africa because they have no moral justification for remaining there.

Action by the companies, however, is not the total solution to the problem of South Africa. Apartheid is the most racist and ruthless system on Earth and its destruction will require the combined efforts of companies, unions, churches, governments, world public opinion, and most of all, the courageous efforts of those within South Africa itself who are standing up for justice and freedom.

But companies can and should play a major role in this effort because the companies have been the main beneficiaries of the injustices from this unjust system in the past and they have a duty to help end those injustices.

AMERICAN COMPANIES SHOULD SET THE EXAMPLE

American companies in particular should set the example. We are the representatives of freedom and justice, I am told, in the world.

This can be done through, among other ways, full adherence to the Sullivan principles. The principles are an equal rights code for corporate conduct in South Africa. They were initiated 8 years ago and are the most stringent and demanding measurement for corporate equal rights responsibility in the world today. Essentially, the principles call for an end to all discrimination against blacks in company operations; equal pay for equal work; training and elevation of blacks in large numbers to supervisory and administrative jobs, including black supervision over whites; extensive aid to housing, health and other community programs; the recognition of representative, independent, free black trade unions, thereby helping empower the black worker who is the greatest hope for peaceful change in South Africa; and the companies are called upon for major emphasis of support to education for blacks without which political apartheid will one day become economic apartheid.

A strengthening of the principles now requires U.S. companies to actively support the freedom of blacks to work or live where they choose, as well as to work actively through their lobbying process and any other means at their disposal for the end to all apartheid laws. This means U.S. companies must actively work for the end to influx control, forced removals, passbook requirements, detention without trial, and for black full citizenship rights and the full and equal participation of blacks in the political process.

The principles are working. As a result of them, the U.S. plants are desegregated. Equal pay for equal work is beginning to be paid for black workers. Blacks are being elevated to administrative and supervisory jobs. Blacks are supervising whites. Blacks are being trained for new technical skills. Independent, free black trade unions are beginning to be recognized. Schools are being built. Housing developments are being constructed. Health centers and programs are being initiated and young blacks by the tens of thousands are being assisted with better education.

Also, the impact of these principles goes far beyond these gains and the opportunity to provide to the limited number of blacks employed by American companies who are less than 1 percent of the total black work force. The principles are a catalyst for change and affect conditions for black workers throughout the country. They are a lever on other companies.

A group of South African companies employing a million workers, mostly black, are now using the principles in their practices. The principles have started a revolution in industrial race relations across South Africa. Also, they have become a platform for many in South Africa arguing for equal rights in Government and other places.

But with these gains, far, far, far more must be done by American and other companies of the world. Growing and mounting times of protest and turmoil within South Africa makes fundamental change crucially urgent if that country is to avoid a bloodbath. The pace of change is far too slow. The companies in South Africa are powerful and must become more active in the struggle.

Also 1,000 companies from America and the world in South Africa practicing equal rights and taking firm stands against apartheid laws would make a dramatic difference in helping bring about the ultimate dismantling of apartheid. The companies must be pushed harder for faster results.

The U.S. company effort is the most vital and impactful company effort in South Africa today. But even with that, unfortunately, more than 100 U.S. companies in South Africa still do not support the equal rights principles and some who claim to be supporters are dragging their feet and getting failing grades.

All U.S. companies should become a part of these principles and measure up fully in their implementation, or those who fail to do so should be pressed to leave South Africa, through total divestment actions, stockholders' resolutions, boycotts, and the actions of the Congress of the United States.

Also, Congress should make the newly tough and amplified principles mandatory for all U.S. companies in South Africa, backed up with embargos and sanctions and other penalties for noncompliance. For I would rather see 50 American companies remaining in South Africa aggressively promoting equal rights and actively opposing apartheid than 300 American companies and of them many using the principles as camouflage and doing business as usual. The noncomplying U.S. companies must shape up or get out of South Africa.

Companies from other nations doing business in America as well as doing business in South Africa should be required to follow stringent equal rights principles in South Africa or face severe U.S. import restraints to the ability of the United States to do so.

These companies must also be pressured within their own countries by their own peoples and their own parliaments to oppose apartheid aggressively. Unfortunately, European companies are lagging well, well behind the Americans and the Japanese, who do such heavy business in the U.S. as well as sell massive amounts of commodities in South Africa, are doing nothing.

South Africa is the place for the companies of the world to demonstrate a concern for justice and benefits to humanity. The enemy of capitalism is not communism, but the selfishness of capitalism. It is time the companies showed another side to the world.

MORATORIUM ON AMERICAN ECONOMIC EXPANSION

Meantime, until we see clear and effective movement toward the abolition of this ruthless system, meantime, there must be a moratorium on all American economic expansion in South Africa until apartheid is ended officially.

There should be no new investments, no new bank loans to the South African Government or its agencies, and the end of the sale of the krugerrand, and a halt to the sale of any equipment, material, or services to the military or police of South Africa, backed up with embargos, sanctions, and other penalties by the U.S. Congress.

It is also my hope that the President of the U.S. will support strong measures involving sanctions and will set aside constructive engagement and use direct diplomacy with the South African Government calling in the strongest of terms for the abolition of apartheid.

Finally, more and more it is clear to me that a deadline is needed for conclusive action in South Africa. Lives are being lost daily and that nation is near the threshold of revolution.

It is my view, therefore, that if apartheid has not in fact ended legally and actually as a system statutorially within the next 24 months there should be a total U.S. economic embargo against South Africa and the withdrawal of all American companies and that it will be followed hopefully by similar actions by other nations and companies in South Africa from those measures.

There are those who say that these measures cannot work, but I say, with the help of God and with the action of this Nation ringing a new bell of freedom for black rights in South Africa, showing the world that we are drawing the line and taking a stand against apartheid, and I say with the support of those within this Nation and within South Africa who want to see a nonviolent resolution to this issue, and I say with the help of God, the peaceful ending of apartheid can still be attained if governments, the companies, and others searching for workable solutions act now before chaos comes and the sky falls.

Thank you very much.

[The complete prepared statement follows:]

Testimony Given by Rev. Leon H. Sullivan, Pastor, Zion Baptist Church, Philadelphia, PA

I welcome the opportunity to bring this testimony before this important Senate Banking Committee. The question of apartheid is a tragedy in the world and we must take the lead in America to bring about its abolition. My principle interest here had to do with the effects of multinational companies on the ending of apartheid.

Multinational companies in South Africa, along with other influential institutions, can be a major force in the liberation of blacks in that nation. However, for this to happen American and other outside companies doing business in South Africa must be pushed to the utmost to eliminate all racial discrimination in their operations and to use their great strength to help persuade the South African Government to end all apartheid laws.

Companies that fail to do so should be compelled to leave South Africa because they have no moral justification for remaining there.

Action by the companies, however, is not the total solution to the problem of South Africa. Apartheid is the most racist and ruthless system on Earth, and its destruction will require the combined efforts of companies, unions, churches, governments, world public opinion, and most of all, the courageous efforts of those within South Africa itself. But companies can and should play a major role in the effort, because they have been the main beneficiaries of the injustices in the past and they have a duty to help end those injustices.

American companies, in particular, should set the example. This can be done through, among other things, full adherence to the Sullivan principles. The principles are an equal-rights code for corporate conduct in South Africa. They were initiated 8 years ago and are the most stringent and demanding measurement for corporate equal rights responsibility in the world today.

Essentially, the principles call for an end to all discrimination against blacks in company operations; equal pay for equal work; training and elevation of blacks in large numbers to supervisory and administrative jobs—including black supervisors over whites; extensive aid to housing, health, and other community programs; the recognition of representative independent free black trade unions—empowering the black worker, who is the greatest hope for peaceful change in South Africa—and major emphasis on education for blacks, without which political apartheid will one day become economic apartheid.

A strengthening of the principles now requires U.S. companies to support actively the freedom of blacks to work or live where they choose, as well as an end to all apartheid laws. This means U.S. companies must use their lobbying power and any other means at their disposal to work for the end of influx control, forced removals, passbook requirements, and detention without trial; and for black full citizenship rights and the full and equal participation of blacks in the political process.

The Sullivan principles are working. As a result of them, U.S. plants are desegregated, equal pay for equal work is beginning to be paid to black workers, blacks are being elevated to administrative and supervisory jobs, blacks are supervising whites, blacks are being trained with new technical skills, independent free black trade unions are being recognized, schools are being built, housing developments are being constructed, health centers and programs are being initiated, and young blacks by the thousands are being assisted with better education.

Also, the impact of the principles goes far beyond these gains, and the opportunities provided the limited number of blacks employed by American companies, who are less than 1 percent of the total black work force. The principles are a catalyst for change and affect conditions for black workers throughout the country. They are a lever on other companies.

A group of South African companies employing 1 million workers, mostly blacks, are now using the principles in their practices. The principles have started a revolution in industrial race relations across South Africa. Also, they have become a platform for many in South Africa arguing for equal rights in Government and other places.

But far more must be done by American and other companies of the world. Growing and mounting tides of protest and turmoil within South Africa make fundamental change crucially urgent if the country is to avoid a bloodbath.

The pace of change is far too slow. The companies in South Africa are powerful and must become more active in the struggle. 1,000 companies from America and the world in South Africa practicing equal rights and taking firm stands against apartheid laws would make a dramatic difference in helping bring about the dismantling of apartheid. The companies must be pushed harder for faster results.

Unfortunately, more than a hundred United States companies in South Africa still do not support the equal rights principles and some that claim to be supporters are dragging their feet. All United States companies should become a part of the principles and measure up fully in their implementation, or those who fail to do so should be pressured to leave South Africa through total disvestment actions, stockholder resolutions, boycotts or other means.

Also, Congress should make the newly toughened amplified principles mandatory for all United States companies in South Africa, backed up with embargoes, sanctions, and other penalties for noncompliance. I would rather see 50 American companies remaining in South Africa aggressively promoting equal rights, and actively opposing apartheid, than 300 companies using the principles as camouflage and doing business as usual.

The noncomplying U.S. companies must shape up, or get out. Too, companies from other nations doing business in America, as well as doing business in South Africa, should be required to follow stringent, equal rights principles in South Africa or face severe United States import restraints.

These companies must be pressured within their countries by their people and their parliaments to oppose apartheid aggressively. Unfortunately, European companies are lagging well behind the Americans, and the Japanese are doing nothing.

South Africa is the place for the companies of the world to demonstrate a concern for justice and benefits to humanity. The enemy of capitalism is not communism, but selfish capitalism. It is time the companies show another side to the world.

Meanwhile, there must be a moratorium of all American economic expansion in South Africa until apartheid is ended officially. There should be no new investments, no new bank loans to the South African Government or its agencies, an end to the sale of the kruggerrand and a halt to the sale of any equipment, material, or services to the military or police, backed up with embargoes, sanctions, and other penalities by the United States Congress.

It is also my hope that the President will set aside constructive engagement and use direct diplomacy with the South African Government, calling in the strongest of terms for the abolition of apartheid.

Finally, more and more, it is clear that a deadline is needed for conclusive action in South Africa. Lives are being lost daily and the nation is on the threshold of revolution.

It is my view, therefore, that if apartheid has not, in fact, ended legally and actually as a system within the next 24 months, there should be a total United States economic embargo against South Africa, but with the help of God it can still be attained, if governments, the companies, and others searching for workable solutions act now, before the sky falls.

Senator HEINZ. Reverend Sullivan, the term anticlimax for what the rest of us are going to engage in is inadequate to describe what is about to happen.

I have a few questions as I suspect many of my colleagues do. I cannot begin to make my questions nearly as eloquent as your very moving declamations.

I gather from your testimony, though, that you do feel that the Sullivan principles have caused some companies—not all—to improve their practices where the companies might otherwise not have done so. Is that right?

Reverend SULLIVAN. That's an absolute fact. The principles have been the main factor that have caused the companies to improve their efforts and to work toward changes.

Senator HEINZ. Now the Sullivan principles are voluntary. What is it about the current Sullivan principles system that causes companies that do adhere to it to do so?

Reverend SULLIVAN. Because of the commitment I think more from the leadership from the companies, that they want these principles to be aggressively followed, and by the support and the aggressive efforts of management who are required to carry out those commitments, and because of the initiatives that are taking place within South Africa in order to implement these principles.

Senator HEINZ. Now a number of U.S. companies—indeed, I'm told more companies than not--do not participate in the Sullivan principles. The ones that do participate cover the majority of workers. The ones that don't are more numerous as entities but have the minority of workers.

Do you believe that the companies that do not participate in the Sullivan principles should be required to do so by law?

IMPACT OF SULLIVAN PRINCIPLES BY LAW

Reverend SULLIVAN. I absolutely believe all United States companies doing business in South Africa, if they remain, must be required ~~and should~~ be required to do so by law.

Senator HEINZ. What will the results of such a law be? Would you anticipate all of the companies now there in fact would comply or would some of them simply close up and leave? You've been there many times. You have looked into this on many occasions. What, in your best judgment, would be the likely outcome of that requirement?

Reverend SULLIVAN. Some of these companies will close up and leave. Some will aggressively follow through on the implementation of these principles, and I believe, through their efforts, will make up for those who leave.

Senator HEINZ. Is it because their competitors would not be implementing anything similar to the Sullivan principles that the companies that would close up and leave would do so, or would it be just because they don't like being told what to do?

Reverend SULLIVAN. Many companies will not want to be told by the Government what to do and who prefer, rather than to risk this kind of relationship with Government, would take the side of leaving. Some would leave because to live up fully to the Sullivan principles takes away a lot of profit. It means salaries must be escalated to be equal to white workers. It means that support must be given to the development of schools, health, and education programs. It means that they must assume a cost far, far, far beyond anything companies have ever had to assume before.

And, therefore, taking it all in the picture, there are many who will say that it is cheaper to leave and certainly the problems will be less if they left.

Senator HEINZ. And those companies that now do subscribe and implement the Sullivan principles do pay a cost?

Reverend SULLIVAN. All companies if they're subscribing and supporting the principles bear a cost in new wages first to black workers. One reason I initiated the principles is because of the cheap labor many companies for 100 years or 200 years from Britain and other places have been going to South Africa and they have been making vast profits off of cheap labor. So I wanted to do away with that cheap labor and bring equity to the black worker and that is why I stand so strongly behind independent free black trade unions because they can do more in that respect than I can do because internally they can collectively bargain for equal wages and see that they come.

But the effort of the principles takes away a lot of that extra profit and brings them into line with the kind of business relationships and profits that should be.

Senator HEINZ. How do you feel that the Sullivan principles, your principles, compare to other national codes of conduct for their companies in South Africa, if there are any? Are the Sullivan principles unique? If they are not unique, are they stronger, better, or are there some codes of conduct that in fact that are better than ours?

Reverend SULLIVAN. The Sullivan principles are the forerunner of all codes of conduct in South Africa and because of our measurement criteria and because of the process of the evolving nature of the principles that requires companies to continue to strengthen their implementation, the principles are stronger, more stringent than any equal rights codes in South Africa by far.

Senator HEINZ. What you have described is costly, you've described it as voluntary, you've described as effective. What resistance has there been by American companies to subscribing to your principles?

Reverend SULLIVAN. I have received letters, telephone calls, and visitations from companies who have told me it is not their desire and it will not be their will and they will never become signatories to the principles where the operations are determined by a black preacher—I mean, by a preacher—or by anyone else, who might be telling them what to do. I've heard from companies that it's not their role to get involved in matters like this in foreign countries. It is their role to do business as business and it's not their role to get involved in social change and other matters.

REACTION OF SOUTH AFRICAN GOVERNMENT TO THE PRINCIPLES

Senator HEINZ. Is it your impression—I'm really going to ask you a two-part question—first, that the South African Government encourages any of these companies that have not signed up to the Sullivan principles to indeed not to do so; and second, going a little bit beyond that, what has been the reaction of the South African Government to the Sullivan principles? Have they resisted it? Have they fought it? Have they objected to it? What has been their reaction?

Reverend SULLIVAN. I have no record that the South African Government has attempted to dissuade American companies from becoming voluntarily connected with the principles. I have no record of that at all.

I do know that when I began the initiation of the principles there was a sympathetic receiving of these principles from Government officials when they began because perhaps they thought that there would be a few statements and perhaps they would not go very far. But they did not realize that these principles represented a beginning and that the intent of these principles is not just fair employment practices, but the elimination of apartheid. And now these principles, with this new stronger amplification, requires for companies to lobby for the ending of all apartheid laws and to get to the heart of the influx control to see that black workers have the right to live and work where they choose.

So at this point, I would think that the South African Government would be very much disturbed about my direction and I believe particularly these sanctions and these deadlines.

Senator **Heinz**. Less than 1 percent of all the black workers in South Africa are fortunate enough to work for a company that subscribes to the Sullivan principles, a very small fraction at that.

How about the other 99 percent of the workers? To the extent that they—what do they know about their fortunate few brethren who may be working in companies covered by the Sullivan principles and do they believe that your principles in fact are making a difference and can make more of a difference?

Reverend **Sullivan**. I am certain you will find all kinds of shades of opinion in South Africa from blacks and whites pertaining to the principles and their effectiveness. I am sure that blacks who are not working at all will say that it's not helping at all because nothing is helping a man who has no job. And certainly they are not helping persons in companies where they are not being implemented and where they are not being used, certainly outside of American companies.

So I would think that the worker in the plants outside of American companies would be hopeful that strong equal rights efforts would be implemented within their own work environments.

And one reason the principles are important, in spite of the small number of blacks in proportion to the total work force working in American companies, is because they are a lever on the other companies within South Africa and for the catalyst that they are on other companies in South Africa.

It was 5 years ago that the chairman of one of the largest corporations in South Africa visited me and asked what they could do. I asked him to go back and organize a consortium of 10 companies or as many as he could that employed 1 million workers outside of American companies, and to begin the implementation of the principles in their spirit, if not in their signatures.

They went back. This was done. And for the first time in those companies employing 1 million workers, desegregation began. Efforts began toward equal pay for equal work. Registered and unregistered unions for the first time began to be recognized and began to even speak out against apartheid laws as oppressive.

So the catalytic effect of the principles goes far beyond the American companies. They are a lever. They are like a crowbar. If I decided that the changing of the practices of the American companies was all that was needed, I would never have started these principles because it would have been an illusion. The American companies' size is too small in number to change or help change in any proportion South Africa. But you can take a little pick and if you have a hammer on it you can move a mountain if you hit it at the right place.

And what I'm trying to do with these American companies with a pick and a hammer is to hit them at the right place.

Senator **Heinz**. Reverend Sullivan, my time has expired, but thank you for such direct and eloquent answers to my questions. Senator Proxmire.

Senator **Proxmire**. Thank you, Mr. Chairman.

I'm delighted we could hear that little pick and hammer story because I think that that's a good analogy.

One trouble with your principles—and I think they are excellent and they have obviously had a great success and I don't know anybody else, anybody in the country, who's had principles named after them as you have named after you that have had this kind of remarkable effect.

But a difficulty now is that on May 24 we had one panel of four witnesses here and three of the four were against the Kennedy-Weicker bill. The people who appeared, as I recall, were for the voluntary Sullivan principles. The Sullivan principles were fine, just keep them the way they are, that's all they said we have to do.

Now you're Mr. Sullivan.

Reverend SULLIVAN. I am Leon Sullivan. I'm it.

Senator PROXMIRE. You're the author of the Sullivan principles. I'd like to hear how you feel about whether Sullivan principles are enough or whether we should do more?

Reverend SULLIVAN. Absolutely not. They are a part of a broader effort, but they are not the solution to the ending of apartheid. It is important that there be sanctions, embargoes, and the kinds of actions that are embodied in the Sullivan-Gray Act—in the Kennedy-Gray Act.

Senator PROXMIRE. Well, you can call it the Sullivan-Gray, too. I think Senator Kennedy would be delighted to have it called the Sullivan-Gray Act.

Senator HEINZ. I don't know how Senator Weicker would feel to be removed from it.

Reverend SULLIVAN. I support totally the Anti-Apartheid Act of 1985 because I believe, as I have stated, that no new investments, no new bank loans, the end of the sale of the krugerrand—I think you have to send a strong message and I think the ending of any materials or equipment to the South African police or military—all these are essential as we begin to bring this iceberg down.

But I do think that the mandating of the principles is important because all American companies should be a part of this and be measured alike if they remain there, and for one other reason, Senator Proxmire. I make trip after trip to Europe. I have been to London. I have been to France. I have been to Germany. I have been to Denmark. I have been to Sweden. And something has to happen in the world that will move the parliaments of the world to require that companies from their nations aggressively follow equal rights principles in South Africa.

There is more patience with South Africa in Europe than there is in America. There is not the desire for change in Europe as there is in America. And America must take the lead. And what the United States Congress does will have an effect on every parliament of the world and I am hoping, too, that it will have an effect on the Japanese Parliament because the Japanese take up where others leave, and if they take up where others leave, I say either they must practice equal rights in South Africa when they take up or we should not have their commodities in America. I think we should get tough with the Japanese, too. Amen.

HIGH RISK OF BLACK UNEMPLOYMENT

Senator PROXMIRE. One of the arguments being used by the opponents of the Kennedy-Weicker bill is that somehow it will result in the loss of jobs by those blacks employed by American firms and it's harmful to the black community in South Africa and thus they argue the blacks in South Africa oppose its provisions.

Since Kennedy-Weicker is not a disinvestment bill, I fail to see the logic in their argument. Nonetheless, it's being made.

Now as one very familiar, as you are, with the situation in South Africa, we would benefit from your views on this.

No. 1, would Kennedy-Weicker if enacted cause blacks employed by American firms to lose their jobs and would it help or aid the situation of blacks in South Africa?

Reverend **Sullivan**. I think the Kennedy-Weicker-Gray bill, whatever it is, talks about no new investments. I think it talks about businesses, whatever they do, doing it out of their own resources. Businesses who will stay will continue to employ black workers and the fact is, those who leave will be bought up by someone else. So you will still have jobs.

I think that the weight on the side of the Americans to be there is that there is no other unified effort in the world that is pushing for equal rights like the Americans. And therefore, they should stay there as long as possible in order to push for the ending of apartheid if they occur within this deadline.

The second concern I have in terms of the black worker and what happens even if he stays on the job and why it's important that apartheid be ended and influx control be ended and why the abolition of apartheid is so important is that the majority of blacks in South Africa are still very poor and unemployed. Those who work in companies are still the minority.

Therefore, if you provide opportunities for those in the minority as I'm striving to through equal rights codes, they will move further and further ahead, which I recognize and applaud, but the vast number of blacks still remains stagnant because of the structured discriminatory form of apartheid that requires people to live in homelands, that requires the people not to be able to move or work where they choose, that relegates them to lower forms of education so they cannot compete adequately in the job market—these forces of deseparation that make this big block of poor unemployed people remain stable while others advance—and that is why the system has to be ended, so that people have the freedom to move, because the system that restricts them helps them to move closer to those that have.

Senator **Proxmire**. I'd like to ask Mr. Lacovara, if he would, if he would come forward and sit at this microphone right here. I want to ask Mr. Lacovara a question.

ECONOMIC SANCTIONS ADVOCATED BY ABA

I note on page 6 of the statement of the American Bar Association that you believe that many of the features of S. 635—that's the Kennedy-Weicker bill—are consistent with the principles governing economic sanctions advocated by the ABA.

Now people argue against those types of sanctions on the basis that they will only make the South Africans more resistant to change.

Thus I note with satisfaction your statement on page 3 of your testimony that you believe that sanctions can be effective in inducing nations to conform their conduct to international legal norms.

Can you tell us whether and why you believe that the economic sanctions in S. 635 might be effective in inducing South Africa to change its apartheid system?

Mr. LACOVARA. Senator, I will be happy to answer your question.

The American Bar Association's position supporting sanctions against the South African Government rests on two premises. One is the empirical premise that sanctions generally work in legal affairs and we think that sanctions directed by the United States Government at a major trading partner, South Africa, are likely to work.

That, however, is only half the basis for the American Bar Association's support for mandatory economic sanctions against the South African Government. The other part is the importance of the United States maintaining its moral leadership position in the world. Regardless of whether South Africa will respond favorably to sanctions, as we hope it will, we think it is essential for our Nation to draw the line between the rule of law and lawlessness. We should not provide economic support for a regime that enshrines this hateful system in its own legal system.

So although we have some degree of confidence based on our experience as lawyers that sanctions work to a greater or lesser degree, we don't necessarily expect that these sanctions alone, without the kinds of things that Reverend Sullivan is talking about, will cause the dismantling of the apartheid system overnight. Nevertheless, we think the expectation that sanctions will be effective, coupled with this strong moral principle, combine to lead us to support the congressional imposition of sanctions against the South African Government.

Senator PROXMIRE. Thank you very much.

Mr. Sullivan, we have also in this bill a requirement that the President engage in negotiations to try to persuade other countries to cooperate with us in exercising economic constraints on South Africa to get rid of their apartheid system and we ask the President to report to us annually on such negotiations.

Do you think that can be effective? One of the criticisms of our wheat embargo of the Soviet Union, when they invaded Afghanistan, was that nobody else paid any attention to it and it didn't have much effect. Do you think if the President is vigorous in this respect that he can persuade other countries to cooperate in a way that can make this really effective?

Reverend SULLIVAN. I believe that if the President of the United States is vigorous enough and committed to that effort that he could indeed persuade others, particularly the Western powers, to become more strident in their efforts against apartheid and to move toward the abolition of apartheid.

Senator PROXMIRE. In your visits in Europe and elsewhere, did you get the feeling that there was a willingness on a part of a substantial and significant part of the people there, people in power, to act with respect to South Africa and follow our lead if we move?

APATHY IN EUROPE

Reverend **Sullivan**. I have got a feeling that some persons in leadership roles, particularly in parliaments, would be willing to aggressively act if the U.S. Congress acted. But there is an apathy in Europe regarding South Africa like you would never believe. You do not have the divestment efforts and you don't have the free Africa movement and you don't have the Sullivan principles. You don't have people like me and you and others up here who are talking about freedom for people in Europe as we have it in the United States.

But there are those who once the United States acts will then unquestionably act. I met with labor leaders. I've spoken before the International Free Trade Labor Union organizations in Germany and met with the leaders of labor organizations, the Labor Congress in the United Kingdom, and there is a desire on their part to become more formidable in their efforts, but the apathy is still there. But this action from the U.S. Government will lift it to a point of world consciousness, particularly in Europe, that will prompt the Europeans and the other parliaments and governments to move, whereas before I do not believe they will, barring a holocaust.

Now the thing that will happen for some nations to move is for chaos to erupt. Some people move out of necessity. I am saying that it is possible to avert that chaos. I am saying that it's possible, if we act and move now deliberately with a plan to avert a violent end to the South African condition, that it can be obtained through nonviolence.

Senator **Proxmire**. Thank you. My time is up.

Senator **Heinz**. Senator Sarbanes, then it will be Senator Riegle and Senator Hecht, following the early bird rule.

Senator **Sarbanes**. Thank you, Mr. Chairman.

Reverend Sullivan, I join the others in welcoming you to the committee and in expressing appreciation for your very strong, eloquent and effective testimony as well as for your long standing leadership on this issue.

I want to repeat a question that Senator Proxmire put to you, perhaps in a somewhat different way, because I think it's very important to get your answer clearly on this record.

There are some who use adherence to the Sullivan principles to preclude moving to sanctions such as are contained in the Kennedy-Weicker bill. They maintain an either/or approach.

I take it that you, as the author and advocate of the Sullivan principles, reject that approach and see the Sullivan principles as part of a larger effort which also embraces support for sanctions. Would that be correct?

Reverend **Sullivan**. Yes. I see the effort of the Anti-Apartheid Act and the Sullivan principles as complementary toward reaching our ultimate objective, and that is the reason I strongly go on record in support of these sanctions, embargoes, and penalties.

And it is nothing new that I've said, Senator. I've made this statement for the last 5 years.

Senator **Sarbanes**. Second, I take it that you believe that if there is not rapid movement to dismantle the apartheid system the sanctions considered should go well beyond those provided in the Anti-Apartheid Act of 1985; is that correct?

Reverend SULLIVAN. I say, Senator, that if conclusive action does not occur in South Africa with its Government to in fact end legally and actually—that's statutorially—the system of apartheid within the next 24 months, we should move toward a total United States economic embargo, even to the withdrawing of our diplomatic relations and the withdrawal of all American companies from South Africa.

Senator SARBANES. Mr. Chairman, I would like to ask Mr. Lacovara to come to the table. I want to take the balance of my time to draw him out on the American Bar Association statement, which I regard as a very significant statement. Since we would like to put some additional troops in the trenches alongside Reverend Sullivan here, I'd like to hear from Mr. Lacovara.

I'd like your comments, first of all, on the Bar's perception of the apartheid system and what they find so repugnant in it, and, second, on the position the ABA has now taken as to what we should do to remedy or rectify that situation.

Mr. LACOVARA. I will be pleased to respond to that two-part question, Senator.

First, we have asked that the printed record of these hearings include the ABA report that was before our House of Delegates when it adopted its resolution in February. This is a report of some 30 pages in length, copiously footnoted, describing how the South African system of apartheid is inconsistent with the rule of law that is subscribed to by all civilized nations of the world. It is based on the observations of an ABA delegation that went to South Africa last year, the testimony of others and the various legal determinations by international agencies and by our own State Department.

REPREHENSIBLE APARTHEID LAWS

We describe in the report the variety of conditions to which Reverend Sullivan has referred—the homelands policy, for example, the forced relocation of black citizens, the attempts to denationalize South African blacks and the pass laws that restrict the ability of black South Africans to travel or to work freely. We also discuss the various internal security laws that are of special concern to members of the legal profession because they, like the apartheid system itself, involve the perversion of the concept of law which is supposed to be for the protection of the public and of the individual. Under the South African legal system not only is this system of racial segregation enshrined in its Constitution and statutes, but all of the forces of law are devoted to making that system work, including special powers given to the police and the Interior Ministry to suspend rights, to ban, to observe all of the kinds and forms of repression through the authorization of the law that we find so detestable.

These are the conditions that led the American Bar Association to determine that it is absolutely fundamental for the American Government to take strong action—through the imposition of sanctions—to do whatever we can as a people to induce the South African Government, which is responsible for this system, to begin to dismantle it as promptly as possible.

Turning to the second part of your question, Senator, concerning what specifically the ABA proposes, we have lesser expertise in fashioning particular sanctions. However, as an association of lawyers we have developed a series of guiding principles.

As I mentioned in response to Senator Proxmire's question, we believe generally that sanctions directed at recalcitrant parties can be effective. We have suggested in our prepared statement that several principles ought to guide the fashioning and implementation of sanctions that the subcommittee should recommend.

The first of these is that the sanctions should be directed at the South African Government because it is the Government which has implemented and which continues to maintain the system of apartheid and which has the political power to dismantle it if it has the will to do so.

We therefore suggested that, regardless of the possibility that other companies or nations may step into the breach if the United States begins to ratchet down its economic support for the South African Government, nevertheless, we should do what we are capable of doing now to register our repugnance of apartheid. Thus we should at least cease further economic support for the South African Government and cease providing some of the instruments that are used by that Government—the military and the police—for the implementation of this system, particularly in the area of high technology and computer support.

Senator SARBANES. This is a position officially adopted of the ABA, is that correct, by the House of Delegates?

Mr. LACOVARA. Yes, sir, this is the official position of the ABA.

Senator SARBANES. This is the first time the ABA has taken a position on this issue?

Mr. LACOVARA. On apartheid, yes, sir. We have other positions on international human rights, but this is the first time the American Bar Association has specifically addressed the question of sanctions against South Africa.

Senator SARBANES. And this ABA position is premised in part on the extensive report which you've submitted along with your statement which I assume, Mr. Chairman, would be included in the record.

Senator HEINZ. Yes, without objection.

Mr. LACOVARA. That is correct, Senator.

Senator SARBANES. Mr. Chairman, it's been asserted that if the United States acts, the action will be meaningless because other countries will simply move into the breach.

First of all, I think there's a great deal to what Mr. Lacovara says when he asserts that we ought to do what's right; but second, both he and Reverend Sullivan have strongly underscored the leadership role which the United States can play, and the impact which it can have on other countries.

I saw just a few days ago a newspaper report that Norway is moving with respect to the South African situation and that the Norwegian action followed on the heels of action taking place here in the Congress, and in fact the passage of legislation in the House of Representatives.

The French Prime Minister just last week stated that France will not be able to continue its investments if in the next 18 to 24 months definite measures are not taken by the Government of Pretoria to end the practice of apartheid.

Reverend **Sullivan**. That's correct.

Senator **Sarbanes**. As Reverend Sullivan points out, a strong, forceful role—well, let me put the question to you. Do you feel that a strong, forceful role by the United States would result in other countries following the U.S. lead and taking similar action themselves with respect to the South African situation, or do you think they would instead seek to fill the breach and simply move into the economic vacuum that would be created by the American action?

Reverend **Sullivan**. I think the action of the U.S. Government will move other nations and parliaments in the direction of the action of the U.S. Government. In my visits to Europe on occasions gave me that confidence that it would happen. I believe there are those that are waiting for the solid signal of the action of the U.S. Congress, hopefully followed by the support of the President of the United States, and I think if that occurs that you will see a significant move across the Western world in particular with respect to a stronger push for the ending of apartheid.

WINDOW OF FREEDOM IS OPEN

And may I say, I want to emphasize the ending of the system, the pulling out of the root. This is not to say you still don't have problems. We still have problems in America after 100 years that we're still working with. But the window of freedom must be opened and that allows people to have the right of citizenship, the right of political equality, and the right to move and work where they choose. The window of freedom is open and the thing we want to do is pull the law out at the roots because it is the only such law in the world.

I have personally been asked why I'm so involved in this thing. It's not political. I'm not running for anything. First, because apartheid is against the will of God. That's where I am. I'm a preacher. Second, because I'm one of 700 million black people in the world and we can't permit it to continue to exist in this world. Third, because millions of lives will be lost. In case a racial war starts over there, it will become an ideological war. This effect will spread across Africa. The impact will be on every major city on this country and riots will occur in your Harlems across this country and North Philadelphias like you have never seen in the history of America because we will not permit—I will not permit in Philadelphia this Nation to stand beside and fight with a government that is racist and against black people.

Senator **Sarbanes**. Thank you, Mr. Chairman.

Senator **Heinz**. Thank you.

Senator Riegle.

Senator **Riegle**. Reverend Sullivan, we have marched together before on OIC, on other issues and civil rights struggles, and we are marching together again today on this one. I want to thank you for the tremendous moral force you bring to this discussion which is really what has to drive the conscience and in turn drive the actions of this Nation and other nations as well. When you just made the statement as to why you feel so strongly and why blacks can't permit this to continue, these are really the same reasons why whites, who feel the same way, can't permit it either. So you are not alone in that feeling. In fact, that is our feeling, and a feeling that belongs to us together.

I want to take my time, but I'm going to yield first to my colleague so that he might go ahead of me because I know he has some different points of view on some of the issues that he'd like to raise, and I may want to follow along and go through some of those myself. So, if he has no objection, I'm going to let him go next because I know he's anxious to go and then I'll follow him, if I may.

Senator HECHT. Thank you, Senator Riegle.

Reverend Sullivan, when our chairman asked you a question you mentioned that you thought that the Sullivan principles should be a part of the law. Whose law? The U.S. law or the South African law?

Reverend SULLIVAN. Part of the U.S. law.

Senator HECHT. These companies that operate in South Africa that you ask to adhere to the Sullivan principles, do they adhere to the Sullivan principles in total in America?

Reverend SULLIVAN. If the Sullivan principles were applied to companies in the American setting, do they——

Senator HECHT. In other words, you're asking the companies in South Africa to adhere to standards that we do not require them to adhere to in America.

Reverend SULLIVAN. We have equal rights acts, the Civil Rights Act of 1965, but beyond that, we have an Emancipation Proclamation that frees Americans. We have a Constitution that embodies the rights of all Americans. They have the privilege to decide those who would govern over them. We do not have written into the statutes of America the deseparation of the races constitutionally. There is no other place that it exists on Earth.

Therefore, to attempt to relate America to South Africa does not meet the semblance, I think, of an actuality of a humanitarian, or a legal, or a constitutional, or a national condition.

Senator HECHT. But is it not hypocritical for us in Congress to mandate certain principles for an American company to follow when it operates outside the United States and yet not require the same principles of doing business in America?

Reverend SULLIVAN. We can mandate the efforts of companies from America other places because those companies are licensed legally to operate by America, and by those licenses and by that privilege—companies operate by privileges. The privileges are being a part of the United States and that license lets them operate here and elsewhere in the world on the basis of that privilege.

Senator HECHT. I don't have all the Sullivan principles in front of me, but obviously these same companies do not strictly adhere to these principles in America. Do you agree with that?

Reverend SULLIVAN. I agree with that. The fact is, if the Sullivan principles were applied totally by all American companies in terms of the utilization of its resources and the total initiation of its practices, it would make a tremendous impact on the economic and social development of this country.

MANDATE DOUBLE STANDARD

Senator HECHT. Well, let's get back to the original question. Do you think it's right for the American Congress to prescribe certain conditions outside of America and not require the same conditions in America regarding a single company?

Reverend SULLIVAN. Yes, at this point, because in America we have the Civil Rights Act and we have the initiation of the Congress that is on record and we have a Constitution of the United States that protects the rights and the privileges of people in movement and the work on the part of this country that does not exist in South Africa for the majority of its population. Therefore, American companies operating at the privilege of the American Nation should initiate these kinds of equal rights principles or else they should be deterred from that operation as American companies.

Senator HECHT. Let's take principle No. 6, "Improving the quality of employees' lives outside the work environment in such areas as housing, transportation, schooling, recreation, and health facilities." That is what you want to require of an American company doing business in South Africa, and they do not do it in America.

Reverend SULLIVAN. I think the action of the Congress with respect to the efforts of companies in dealing with housing and education outside of the workplace would be a worthy consideration, but my interest is an inhumane state of condition in a part of the world where American companies operate where the rights of individuals are abridged because of a God-given color of their skin.

Senator HECHT. I'm not an attorney. I'm one of the few Members of Congress who is not an attorney, but I question the constitutionality of such a law. How do you feel about that?

Reverend SULLIVAN. I think it's constitutional for the U.S. law to not only permit but to encourage the efforts of U.S. companies to initiate humanitarian ideals and causes and aims when they are in conformity with the ideals of our American Constitution.

I do not separate the American Constitution or the American Nation to a geography; that is, to a continent—that is, to this particular place. I think wherever American presence is, it should represent what America is, and America should stand for equal rights and principles of humanity wherever it is, institutionally, as companies and even as individuals.

Senator HECHT. How can we have allies around the world when we prescribe principles outside of America but do not prescribe them in America?

Reverend SULLIVAN. I think your allies for America in the future will come more strongly as we need it and deserve it on the basis that we exercise our ability to help poor, underprivileged people in developing nations of the world. And I believe that if we do not, the time will one day come when free enterprise and the very things we hold dear will be taken away from us.

Senator HECHT. Go on. Explain that.

Reverend SULLIVAN. I think that the world itself—and I'm just a preacher. I'm a Baptist preacher——

Senator HECHT. I'm just a businessman.

Reverend SULLIVAN. I think the world is at the crossroads in terms of free enterprise, in terms of capitalism, in terms of our way of life and how we deal with other people of the world and how they deal with us. and I think there is a skepticism in much of the world about American principles, not because the principles are not there in our Constitution, but the principles are not there in our actions. And I believe that much of this world is waiting for America to demonstrate its Constitution on the basis of its actions and those actions must be demonstrated in those parts of the world where there is injustice, where there is poverty, and where people are waiting for something to happen to turn their condition around.

If it does not—because I said we are at a very important time in the world—I believe that socialism and I believe that communism will more and more gain strength in this world until America and a few European countries will be isolated as entities on this Earth, and the final battle for your existence will be one that we might well lose because the population of this world still is poor, still is nonwhite, still is striving for opportunity, and they are waiting for us to demonstrate our commitment to what we say we believe. And they are saying, Practice what you preach, not only at home but where they are; and if you don't, one day, step by step, country by country, continent by continent, they will turn against us and they could well destroy us.

Senator HECHT. Getting back to what you said, don't you think we would breed skepticism among the world requiring something outside of America that we don't require here? I just want to follow through on that. You have not answered me on that.

Reverend SULLIVAN. I think if you mandate against continuation of apartheid, you will have more friends to support that initiative than you could ever dream existed. I believe you will have friends within South Africa, white friends within South Africa, Afrikaners within South Africa.

When I announced a deadline several weeks ago, there was great consternation in America with some of my company friends and others that I had painted myself in a corner, that I'd never be able to walk out, that the people in South Africa would never receive it, particularly the whites. I received a telephone call from a member of the South African Parliament, who preferred not to use his name, thanking me for taking the position because it would give them something to stand upon. There are friends out there who are welcoming, looking for something to happen to break the logjam in South Africa, and I believe if we took this position we'll have friends and support around the world that we never dreamed we would have before.

Senator HECHT. Tell me one country in Africa that has better conditions for the blacks than South Africa.

Reverend SULLIVAN. All of them.

Senator HECHT. Ethiopia?

Reverend SULLIVAN. All of them.

Senator HECHT. Ethiopia?

Reverend SULLIVAN. All of them, Senator, because conditions are not dependent upon the money you have in your pocket. It's the freedom you have in your mind. It's the realization that even if you're poor, one day your children can have a farm; that even if you're uneducated, that one day your children can have an education; that even if there's no school in your village, that one day your children will have a school in their village; and that although you are illiterate, one day your child can be president of the nation. It is the freedom. It is not the money. It is not material things that makes a person free or that makes a person rich or that makes a person proud. It is the freedom in their minds that they are free as individuals made of God to live and work where they choose, whether they make it or not.

That's the difference between black Africa, where you talk about despots and where you talk about the problems of Uganda and Ethiopia. The difference is, there, a man can still hope that the day will come when his child can be president of that nation. It might happen.

Senator HECHT. My time is up but I want to point out one thing. In order to be President of a nation, you have to survive, and in Ethiopia the death rate and the dying and the sickness is horrendous.

Reverend SULLIVAN. May I just say this?

Senator HECHT. Yes, and then my time is up.

Reverend SULLIVAN. May I just add one thing?

Senator HECHT. Yes.

Reverend SULLIVAN. The condition in Ethiopia is a condition that is tied to the tug of nations and powers for control of parts of the world, and whether we want to accept it or not, America is a part of that tug for power. And to the extent we can move humanitarily to help those people, to that extent we show that we are on the right side rather than on the wrong side.

Senator HECHT. Thank you, Reverend.

Senator HEINZ. Thank you, Senator Hecht.

Senator Riegle, I think you still have some time left.

Senator RIEGLE. Yes, I hope so.

Senator HECHT. Ten minutes. I took all of his time.

Senator SARBANES. Would the Senator yield very briefly?

Senator RIEGLE. Yes, I yield briefly to my colleague.

PRINCIPLES ADHERED TO IN UNITED STATES

Senator SARBANES. I want to make one point before Senator Hecht leaves, as the one lawyer here on the panel. That is that it is not accurate to say that the Sullivan principles are not mandated in this country and that we are trying to impose somewhere else what we don't impose on ourselves.

"Principle 1: Nonsegregation of the races in all eating, comfort, locker rooms and work facilities," clearly required by American law.

"Principle 2: Equal and fair employment practices for all employees," clearly required by American law.

"Principle 3: Equal pay for employees," clearly required by American law.

"Principle 4: Initiation and development of training programs that will prepare blacks, colored and Asians," in effect, nondiscriminatory training programs. That's required by American law.

"Principle 5: Increasing the number in management and supervisory positions," again a nondiscriminatory application to manage. All of that's required.

Now principle 6 which says they've got to try to improve the quality outside the workplace in housing, transportation, schooling, recreation, and health facilities, is made necessary in the South African context because the Government imposes a highly discriminatory system in all of those areas and has a two-tier approach in education and recreation and health with respect to their white and black populations. It's not necessary to mandate that for corporations in this country because the law in this country mandates that the Government must practice nondiscrimination in all of these areas with respect to all American citizens.

So I don't think it's fair to say that somehow we are applying a double standard here. Companies are mandated in this country to follow these practices, and to the extent practices outside of the workplace are involved, it's not necessary to mandate them because the law mandates that the society in its entirety must practice nondiscrimination.

Senator RIEGLE. Mr. Chairman, before my colleague leaves——

Senator HECHT. May I just answer a telephone call and I'll be right back.

Senator RIEGLE. I understand. I will repeat when my colleague comes back from the phone, because I want to help him see what we're trying to say here. I'd like to bring him to our point of view, although that, too, is a long journey. But I think that one really has to imagine what it would be like if, rather than sitting here in our own individual circumstances as a successful white person in America, you were to wake up the next morning and be in the body and in the circumstances of a black person in South Africa.

Until a Member of Congress has enough knowledge of what the reality is there to imagine what it would be like to be that person, which, as you said earlier today, is an accident of fate as to what body we happen to find ourselves in or what place on this globe we happen to find ourselves—it seems to me that, as you say, it's not the amount of money that's in one's pocket. You could take most of the Senators and if they were suddenly tomorrow to find themselves as blacks in South Africa and still had their money, the things that they would not have are the things that they would realize are what people need to have. And it's not the money.

Reverend SULLIVAN. That's right.

Senator RIEGLE. It's nice to have the money, but without the citizenship, without the standing under the law, without the ability to be a person in the full sense of the word on an equal standing with any other person in your country and in your nation, your money means nothing. It just means nothing.

Reverend SULLIVAN. Right.

Senator RIEGLE. So I was just going to say to my colleague from Nevada, as I listened to that exchange today and previously the other day, in trying to make sense out of it, I was just saying in your absence, that I think the only way we could really understand what life is like for a black person in South Africa would be if we were to leave our own circumstances. All of us in the Senate I think have quite favored circumstances—but if we went to bed one evening and we woke up the next morning and we were black and in South Africa and that was our reality we could more fully appreciate the terrible situation they are in. But if we did not have the other things that we enjoy here, things that the blacks in South Africa do not have, such as the standing of citizenship on an equal footing with others, or the chance to see that change within one's lifetime or even within one child's lifetime, the question I think is, what does the money in the pocket mean? I'm not sure we can address that question very meaningfully unless we try to imagine what it would be like to be in the shoes of that person, which you and I could very easily be but for the accident of fate.

FAMILY OF PEOPLE

You know, you had no more to do with landing in your family than I did landing in mine, and we could just as well black and be in South Africa. The question is: Do we have any connection with one another? I think we do. I think there are around this globe connections between people and that we are really a family of people, regardless of the color, regardless of the background, and regardless of the circumstance.

So I want two things for the South Africans—money in their pocket and the measure of decency and dignity within their own land so that they can live as full human beings with rights that you and I take for granted and would never for a minute give away for all the money that we may have in our pockets.

So that's what's missing. That's the part of the equation that's missing. And if we don't see that and if we don't understand it from inside the experience of that person, then I think Reverend Sullivan is right when he says that we are headed for a catastrophe. The catastrophe is occurring now in the sense that lives are being destroyed and ruined. Hopes are being destroyed and shattered.

But there is another fate coming. The catastrophe is going to change and it's going to turn violent. It is turning violent, and that violence may not be contained to South Africa because of the fundamental questions that it poses.

So I think what he's saying to us is something we have to hear and we have to try to understand. So when you, Reverend Sullivan, talked about the need to set a deadline, it would help me and I think it would help the committee if you gave us two insights—one, what life is like today in South Africa for that black person that yearns to be a free person and a full person; what is that life like for that person today, whether they are 50, or 60, or 40, or 30, or 10, or 12 years in age—what is that life like today?

No. 2, what is coming down the road in 12 months, or 18 months, or 24 months, or whenever, if these issues are not dealt with along the lines that you have described here? Help us understand those realities.

Reverend **Sullivan**. It would take a black South African to answer your question. I am a black American and even I, as a black American, cannot identify with the problems and with the despair and hopelessness of a black person in South Africa.

Let's assume a person who must live in a certain place because he is black. He must work in a certain place because he is black. His child must go to a certain school, if he goes to any school at all, because he is black. He must leave a certain town by a certain time because he is black. He must ride on a certain bus because he is black. He cannot have due process of law because he is black. He can be picked up at any time, any place, by any policeman because he is black. He can be put in jail and left there until he dies without a trial, without a jury, without a judgment because he is black. He has no ability to vote because he is black.

He looks at his child and he realizes that child cannot go but so far except in that black situation in that nation of such prosperity where so many nations of the world are taking riches from it and material things, because that child is black.

And that is why, if apartheid is not abolished, with the rising expectations in South Africa, with 20,000 and 30,000 people coming out in funeral marches and for the first time 20,000 people, 30,000 people, 50,000 people, 100,000 people becoming a part of stay away programs, and for the first time, black leaders, in spite of perhaps the loss of their lives, walking in protest to the jailhouse door to say that we need the dismantling of apartheid, that if apartheid is not pulled out by the roots within the next 24 months, one of these townships is going to break loose and 20,000 or 30,000 or 40,000 people are going to surge toward those urban areas, in spite of who dies, and the military is going to try to stop it and hundreds of people are going to be killed and the surge is going to catch on like a chain reaction across that country and it cannot be contained by the police and the military with its force will come down and the whole thing will go up in fire.

OIL SUPPLY SITUATION

You're talking about a situation where the very existence of a country is at stake, that will involve not only a country, but will involve nations. South Africa, as you know, is situated so that much of the oil supply that goes to the rest of the Western World and Central America must come down and around the Indian Ocean. In case of great tragedy and chaos, there will be those ships still having to flow because we need that energy, we need that oil. So they will be accommodated by the fleets of their nations. They are not going 1,000 miles off course into the ocean. No ships have the capability of doing so. They have to come around the Cape of Good Hope. It's a strategic necessity that oil keeps moving. The minerals you can do without. You can do without the paladium. You can do without the gold. You can do without the silver. But you can't do without that oil. And at some point, there will be a contact between nations with all that happening there and you will find a racial war becoming an ideological war and you will find the beginning of a situation that will involve all of Africa, much of the Western world, and that could become the beginning of an atomic confrontation in that part of the world. And these things can happen within the next 2 years.

If we had acted on Nazism, you would not have had the holocaust, but we waited. Do not wait on South Africa. Act now because if you don't, America and the world will regret it.

Senator RIEGLE. Thank you very much.

Senator HEINZ. Reverend Sullivan, I have just one or two more questions. I had a few questions for Mr. Lacovara, but he has a conference that he has to speak at in 5 minutes, so he has had to leave.

Let me just ask you this. You had in your remarks a very interesting proposition as to how we might address the fact that the United States is pretty much alone right now when it comes either to taking any action that the South African Government can read as genuine disapprobation of apartheid or any codes of conduct for companies doing business in South Africa, and you suggested that it might be desirable for the United States—and I think you particularly had some thoughtful words to say about Japan—that it might be a good idea for the United States to, given I assume some leeway in terms of time—but subject any company from another country doing business both in South Africa and here to some form of economic inconvenience or outright retaliation if those companies from that country did not somehow, someway have a program of implementation presumably somewhat similar to the Sullivan principles.

Do I understand your proposition correctly?

Reverend SULLIVAN. Absolutely. You described it. There are codes for Western nations out of the European parliament. They're called the EEC codes. And there are other codes. But they are not codes that are stringent enough to really prompt the companies to significant action. There is no disclosure of the implementation of the codes by the companies. They are solvents. They are palliatives. They have no strength.

And it seems to me, because most of these countries do business in the United States—all of them do business in the United States, and many of these companies do business in South Africa, that we should not only put penalties on our own companies for compliance, but so that our companies—those who even remain in compliance with the principles, even for 2 years, should at least be competitive in the market with those companies from other nations who otherwise will take the markets and take over when they leave out. And if they do leave out, their leases require those companies who take their place follow the stringent codes that were promoted by the U.S. Government through the Sullivan principles.

Senator HEINZ. You know, in all the debate we usually have about—whether it's Sullivan principles, sanctions, bank loans, investment, no new or none at all, the issue that you have just spoken to often gets ignored. It is often assumed, although we wish it were true, that if the United States does something everybody else just falls right into place.

That is not to say that we can't set a good example and that that example does not have some impact. But you, yourself, have named at least one country that you somewhat despair of, I gather, in following anybody's moral example, namely Japan; and they are not alone. And to the extent that we place additional requirements or burdens or disadvantages, whatever, on American companies, I think it would be a very good idea for us to seek a method of trying to encourage the other mutual trading partners of the United States in South Africa to do likewise.

NO NEW INVESTMENTS

The last point I guess is one that's been a very hot issue for all of us and it's this. I am, like you, to say the least, a great supporter of the Sullivan principles. I think they have done a remarkable amount of good. I think we should statutize them. I think we have to give them greater visibility. I think we have to find methods of getting American companies to step up to the line and actually observe them, not just give them lip service either.

At the same time, in the Anti-Apartheid Act, S. 635, that Senator Kennedy, Senator Weicker, Congressman Gray, and others have introduced, there is, as you know, an immediate no new investment sanction.

Reverend **SULLIVAN**. Yes.

Senator **HEINZ**. Now it can be waived under certain circumstances, but as I read the list of waiver requirements it's probably stretching it to imagine that immediately the no new investment requirement is going to get waived because while the conditions are good conditions, one would have to be an optimist to think that you're going to get to them overnight, and it has always troubled me that meritorious as taking some action against in particular the South African Government may be, to say on the one hand to companies, "Now we want you to spend more money to implement the Sullivan principles, but on the other hand, we're not going to allow you to send more money to your South African subsidiary, that's investment," is somewhat inconsistent. In fact, it's not somewhat inconsistent. It's got to be inconsistent.

And I wrestled with that for some time and I thought I'd just throw the ball to you and let you wrestle with it for a while.

Reverend **SULLIVAN**. It's all right. I'm a wrestler. I have wrestled with it, too, because I have been concerned about black workers and I wanted to be sure that black workers continued to have these opportunities that are coming more and more as a result of the principles largely, and as a result of the United States company effort that is unquestionably the forerunner in South Africa in helping bring about industrial race relation change.

But I concluded that the situations as they are, it is imperative that the industrial leadership of South Africa and the Government of South Africa realize that all the United States economic expansion must halt and that American presence, whatever it is, in the economic field must mark time until we can see the extent to which the South African Government will move decisively to the end of all of our efforts—the opening of the window of freedom to the black population, the emancipation of the black people through the ending and the abolition of apartheid as a system.

And I came down with the conclusion in my own mind that the benefits of the abolition of the apartheid system at this time are more important than the expansion of American companies or any others.

Senator HEINZ. Do we have any reason to believe that the no new investment ban will be, on top of banning bank loans, stopping the importation of krugerrands being the main other sanctions—do we have any reason to believe that that is the make-weight that will actually cause something to happen that would not otherwise happen if we do the first set of sanctions directed to the South African Government? Because it seems to me in order to say—and I'm not talking about 2 years from now. I'm talking about now. In order to say that we ought to have a no new investment policy for United States companies in South Africa, in order for that really to be worth the cost, which you yourself recognize—I mean, you yourself just from what I've said would say, "Well, it's not going to be good for those companies. They may or may not be able to make it. Some will, some won't." They tend to be the more capital intensive companies that need the investment more than others—that it is important to be able to conclude, with reason, that after you've implemented the ban on bank loans, the ban on krugerrands, the ban on the computer sales, and the ban on anything that helps the South African Government or its police force repress the majority of people there who happen to be black, that one can make a credible case that somehow that isn't going to be enough to wake up the South African Government, No. 1, and that you have to do something more; and, No. 2, what is enough, even though it's very limited in one respect, no new investment to American companies, is somehow really going to make a difference, it's going to tip the scales, and that that is—while there may be a lot of moral force behind it, that there's also going to be sufficient increment of political force here and there to make a difference?

You've been to South Africa a lot.

Reverend SULLIVAN. Not a lot.

Senator HEINZ. You know it better than any other member of this committee. I confess myself to some skepticism as to whether that's going to be the make-weight, but I would value your judgment.

EFFECTS OF U.S. POLICY

Reverend SULLIVAN. No new investment by the United States will not be the tip weight in itself, but the effects of the U.S. Government taking this initiative will cause a tip weight because there is no question but that the leadership of the United States will be one that will be used as a standard for others to follow in parliamentary actions and acts.

The other factor is that many U.S. companies are already assuming a policy of no new investment. Many of the companies are saying now that there should be no additional risks economically in South Africa, and that will continue on as this debate gathers because it's just starting.

This 2-year deadline is going to cause it to be heightened even more because it comes at the beginning of the Presidential debates and South Africa must become a part of that debate. The 2-year deadline ends at that point. It has to become a point of debate.

So you're not going to have companies making great expansion or any great investment at any rate.

Then you must remember you will still have the divestment movement. You will still have stockholders' resolution. The efforts of the States and the city pension funds will not go away. The action of the U.S. companies will not preclude all these other efforts going on in America and in the world. You will still have boycotts.

What America is saying is in a message loud and clear, that this is the direction that must be taken in order to help bring down this oppressive regime. And I think that you will have more friends and support within South Africa than you would ever believe because many white South Africans, Afrikaners, are hoping for something to happen for them to hang their hats on so that they can get on with the business of building a free, prosperous South Africa. Because, when apartheid ends, South Africa will become one of the most prosperous nations in the world. Businesses will expand beyond their expectation. Half of all the noble metals in the world used for a technological age are in South Africa. The other half are in Russia and the Baltic states. And if South Africa sees the wisdom of taking that root out, of abolishing it—they have already begun. The process has already begun. When you admit blacks into political parties, it's already begun. When you recognize free black trade unions with collective bargaining rights, it's already begun. When you abolish laws against mixed marriages, integrating families in the bedroom, it's already begun. When you get Government officials talking about ending influx control, talking about citizenship rights for blacks, talking about black political participation, it has already begun.

When you get people in South Africa saying, "We must talk to Nelson Mendela," because if they don't talk to Nelson Mendela there will be no resolution of the problem, you've already begun.

And those forces will help in 2 years for them collectively to pull that root out. That's not saying that the problems of South Africa will disappear. You're going to have black communities like you have Harlem, black communities like you have in North Philadelphia, cities like you have the District of Columbia. And we've been free for 200 years.

But the important thing is a man is free to move where he wants to move, to work where he's capable of working, free to say, "One day, doggone it, I can be President of this country, like everybody else."

Senator HEINZ. I can't imagine a better note on which to conclude this hearing. Reverend Sullivan, thank you very much.

[Whereupon, at 1:35 p.m., the hearing was adjourned.]

[Additional material supplied for the record follows:]

As Prepared for Delivery

SOUTHERN AFRICA:
TOWARD AN AMERICAN CONSENSUS

ADDRESS BY

THE HONORABLE GEORGE P. SHULTZ

SECRETARY OF STATE

BEFORE THE

NATIONAL PRESS CLUB

WASHINGTON, D.C.

TUESDAY, APRIL 16, 1985

EMBARGOED UNTIL DELIVERY, SCHEDULED FOR APPROXIMATELY 1:00 P.M., EST, APRIL 16, 1985. NOT TO BE PREVIOUSLY CITED, QUOTED FROM, OR USED IN ANY WAY.

Much has been said in recent years about the need to rebuild the national consensus in foreign policy -- the consensus that assures continuity and purpose in our diplomacy. I share that view.

Consensus does not just happen spontaneously. It must be nurtured, like a garden; it grows from knowledge and experience. Consensus should be a positive force: We need to decide what we are for and know what means are available to achieve our goals; consensus cannot be simply a negative catalogue of what we are against. And we will achieve neither consensus nor results if our public discourse is simply emotional, or divorced from facts and from a realistic understanding of the problems at hand.

Today, I want to speak about an area of the world that has become a focus of interest and debate; and where both our policies and the regional realities are too often misunderstood or even distorted. I am talking about southern Africa.

A great human drama is unfolding in southern Africa, as new nations struggle for stability and progress and as South Africa itself confronts the necessity of internal change. This drama has crucial implications for the United States. The region's future touches on our most basic moral convictions as well as our interests and our global responsibilities for security and peace.

On such an issue above all, a national consensus is imperative. On a question of such overwhelming moral, practical, and strategic significance, our national policy must be coherent, considered, and effective. We simply cannot afford to let southern Africa become a divisive domestic issue -- tearing our country apart, rendering our actions haphazard and impotent, and contributing to the ugliest and most violent outcome.

Equally important -- and I believe this deeply -- the elements of such a consensus exist, based on our principles, our goals, and our capabilities. Few Americans today would contest that we want to help the people of South Africa -- black and white -- build a just society; and we want to promote peace, freedom, and progress throughout southern Africa. Few Americans would contest that change is inevitable. The question now being debated is: How best can we help South Africans manage that change? What is the most effective way to promote a just and peaceful outcome?

Today I will outline the analysis and the facts that underlie our strategy. I do so with confidence that Americans overwhelmingly support the goals of racial justice, progress, and peaceful change, and are realistic enough to judge for themselves what policies work and don't work.

Southern African Realities

In 1981, the new Reagan Administration found in southern Africa a region marked:

- by growing racial tension in South Africa;
- by escalating cross-border violence;
- by Soviet and Cuban intervention in the region;
- by stalled negotiations for the independence of Namibia, a territory illegally ruled by South Africa; and
- by governments that were willing, indeed eager, to see the United States undertake an effective and forceful diplomatic role.

To play such a role, we had to take into account hard realities.

The first reality is that South Africa's denial of political rights to the country's majority -- apartheid -- is not only morally indefensible; it is in the long run unsustainable.

South Africa's blacks are making their voices heard, saying that they are no longer willing to live under a system that denies them fair political participation; both demography and economics are on the side of those challenging the old order. The key psychological breakthrough will come when everyone in South Africa recognizes that change is coming; then the question shifts from "whether" to "how." An upheaval of bloodshed and destruction would be a monstrous tragedy for all South Africans of all races.

Second, South Africa is not a small island. It is a regional powerhouse endowed with vast mineral resources and real economic might. It is the hub of the entire area's economy and infrastructure. The bordering states -- Mozambique, Zimbabwe, Botswana, Lesotho, Swaziland, Namibia -- and even countries farther away such as Zambia and Zaire, are heavily dependent upon South Africa's ports, industries, railway networks, and financial institutions. At the same time, South Africa needs -- but to a lesser degree -- the markets, the labor, the transport systems of its neighbors. Any policy which ignores this symbiotic relationship is out of touch with reality. A scenario of upheaval in South Africa will spell disaster for its neighbors.

But for much of the past decade, this interdependence has been strained by hostility and armed conflict. This is the third reality: Southern Africa has been a region of conflict, with warfare or armed dissidence of one form or another in South Africa, Zimbabwe, Mozambique, Namibia, Lesotho, and Angola. A senseless cycle of cross-border violence increased in ferocity as guerrillas operating from the black states thrust into South Africa, while South Africa turned on its neighbors with its military might and destabilizing efforts.

The violence has provided new opportunities for our global adversaries. And this is a fourth reality. Today there are about 30,000 Cuban troops in Angola, along with Soviet and East European advisers. Soviet aid in the region has been almost exclusively military. Our adversaries have no constructive stake in the region, seeing rather in instability their best chance to expand their influence. When the Soviets and Cubans intervene in a part of the world far from their borders, we had better pay attention. Such intervention threatens African independence, as well as the global balance. The peoples of Africa deserve better than the bankruptcy -- economic, political, and moral -- of the Soviet model. More and more Africans have come to look to the United States and the West for help in addressing the twin challenges of regional peace and economic survival.

This leads to a fifth reality -- the importance of the American role. Of course there are limits to what we can do directly. Our influence over issues and players is not the determining factor in their actions. Nevertheless, we are not without potential to affect events. While the Soviets can fan conflicts and supply the implements of war to pursue them, they cannot produce solutions. That peacemaking role can only be played by a power that has a working relationship and influence with all the parties, including, of course, South Africa.

I have devoted some time to describing the broad regional realities because the regional context is all-important. Its many dimensions are interrelated. The external environment has a direct bearing on the situation within South Africa; a white government that no longer sees itself as besieged from outside its borders will be better able to take the steps it must to reform its own society. Conversely, internal upheavals in South Africa can spill over and complicate the regional diplomacy. An end to cross-border violence is essential if the surrounding black states are to be able to devote their energies to economic development or to offer less tempting opportunities to Soviet adventurism.

From the outset, the Reagan Administration undertook to help influence the process of change:

-- to accelerate the peaceful evolution in South Africa away from apartheid; and

-- to diminish the violence and instability that threaten lives and livelihoods throughout the region.

The complexities are daunting. But the United States has confronted an unsatisfactory situation, worked at the problem with care and determination, and achieved a good measure of progress. There have been ups and downs, obstacles and setbacks. But through painstaking diplomacy, we have reached the point where the agenda we proposed is accepted by all participants; where we, not the Soviet Union, have a major say in helping shape the region's political future. There is now less cross-border violence than there has been in eleven years. There has been more reform in South Africa in the past four years than in the previous thirty.

The gains are fragile. Nonetheless, a process of change is clearly under way -- offering hope to Africa's peoples if we continue to show responsibility and dedication in helping them manage that process.

South Africa

Let me start with the central issue of domestic reform in South Africa. In pursuing that goal, we have been guided by two important facts.

First, South Africa is not a closed, totalitarian society in which the government controls all aspects of life, all means of communication, all avenues of thought. While the white minority dominates the system, there is in that system a significant degree of openness of political activity and expression -- a generally free press, an independent judiciary, vigorous debate within the governing party and in parliament, and vocal critics of all viewpoints. There is nothing comparable in the Soviet Union. This degree of openness reflects the fact that white South Africa is not immune to the moral influence of the West; indeed the white community's desire to be viewed as part of the Western world, and its growing recognition of the need for change, are among the grounds for hope for peaceful change. How many governments in the world would permit ABC's Nightline program to set up shop for a week, probe and dissect the country's ills, film heated debates between government leaders and their most ardent critics, and then show those programs to its people?

Second, we chose to focus on getting results. We cannot have it both ways: We cannot have influence with people if we treat them as moral lepers, especially when they are themselves beginning to address the agenda of change. South Africa's neighbors recognize this. We must too.

By the same token, this has not kept us from speaking out -- to South Africans of all races and to the American people. We have conveyed the message to the South African Government that a more constructive relationship with the United States is possible, provided that it demonstrates a sustained commitment to significant reform toward a more just society:

-- We have consistently called for an end to apartheid;

-- We have spoken out forcefully for press freedom and against repressive measures such as forced removals, arbitrary detentions, and bannings;

-- We have called for political dialogue between blacks and whites and for an end to Nelson Mandela's long imprisonment;

-- With our support, U.S. businesses have become a positive force for change in South Africa by adopting the Sullivan Code of fair labor employment practices and by providing educational, housing and other benefits worth more than $100 million to their black employees over the past few years; and

-- We have developed nearly $30 million in assistance programs to train leaders in the black community to help them work more effectively for change in their own society.

The truth is that South Africa _is_ changing. For the most part, the transformation is being brought about by reality -- by the growing realization that a modern industrial society simply cannot be governed by a pre-industrial political philosophy of racial segregation.

The old illusion that South Africa's blacks could live permanently or enjoy citizenship rights only in designated tribal homelands -- so that in the end there would no longer be any "South African blacks" -- is being abandoned. Blacks are no longer prohibited from acquiring property rights in the supposedly "white" urban areas. The right of blacks to organize trade unions has been recognized, and black unions are now a powerful factor on South Africa's industrial relations scene; fully 50 percent of trade unionists in South Africa are black. Central business districts are being opened to black businessmen, and cities like Durban and Cape Town are desegregating their public facilities.

Faced with the obvious injustice of forced removals of settled black communities, and with the obvious inability to stop the influx of blacks into the cities, the government has suspended such removals and is shifting to what it calls an "orderly urbanization" policy.

The government has now acknowledged that it must consult with representative blacks about political participation outside the tribal homelands and at the national level; mere local self-government is understood to be inadequate. Just this week, the government accepted a special commission's report that calls for the abolition of laws banning interracial marriage and sexual relations -- one of the most important symbols of apartheid.

If we recognize that white opinion holds vital keys to change, then we must also recognize that change must originate in shifts in white politics. In this regard, in the past three years, the white government has crossed a historical divide: It has been willing to accept major defections from its own ranks in order to begin to offer a better political, economic, and social deal to the nation's black majority.

These changes are not enough. South Africa is not now a just society.

Serious inequities continue: repression, detentions without trial, and the prospect of treason trials for some black leaders. The issues of common citizenship for all, and of black political rights, have been raised but not yet concretely addressed by the government. The hated pass laws and influx control continue, though the government appears to be rethinking its actions on this front. Much more must be done. Change has just begun, but it has begun. Our job is to continue to encourage it.

The recent domestic violence is clearly a setback. All Americans are saddened and dismayed at the almost daily reports of violent encounters that have caused nearly 300 deaths among black South Africans over the past nine months. The United States has consistently, repeatedly, and publicly deplored this bloodshed and the police tactics that only produce killings and add fuel to the unrest.

There is no excuse for official violence against peaceful demonstrators. Any government has a duty to maintain law and order. Nevertheless, that cannot be done simply on the basis of force; law and order also means due process, and adequate channels for airing and resolving grievances.

But just as we recognize the right of peaceable assembly, so, too, if we are to be taken seriously, must we reject the right of any to take the law into their own hands. That is a formula for anarchy. We applaud the courage of those black leaders who press for non-violent change, confronted on one side by a surging mass of black bitterness and on the other by a long-unresponsive political system. We welcome the words of Bishop Desmond Tutu, Nobel Peace laureate, who urged a crowd of blacks at a funeral the other day: "Don't undermine our wonderful cause. Let us not use the methods that are used against us by our enemies. When we finally achieve our goal of freedom, we must be able to look back with pride at how we got there."

There are responsibilities here for all South Africans, and most particularly for those in authority. We hope the government will move quickly and concretely to restore confidence in its reform commitments; we urge it to take up the dialogue with black leaders about the road to a just society. We urge all South Africans to take advantage of openings for peace.

Regional Security

Peace within South Africa, as I said, is directly linked to the question of regional peace. A society that feels immensely threatened by outside forces is less likely to loosen the controls at home. Nor can black states normalize their relations with their South African neighbor so long as there is no convincing movement away from apartheid.

The United States has worked hard, and successfully, to maintain the confidence of the parties and to facilitate negotiated solutions:

-- We helped bring South Africa and Mozambique together in the Nkomati Accord of March 1984, ending government-supported cross-border violence and promoting economic cooperation. This accord faces serious challenges, but both sides are committed to making it work.

-- We helped Angola and South Africa agree on a plan for the withdrawal of South African forces from Angola and control of SWAPO and Cuban troops in southern Angola. The war between South Africa and Angola is over; there has in fact been peace for the last 14 months.

The few South African troops left in Angola as part of a joint monitoring commission will be withdrawn this week as the final step of disengagement. The problems of Angola and Namibia are far from solved, but this marks important progress.

-- Our diplomacy, in concert with key Western allies, has brought Namibia closer to independence than ever before. Agreement on a timetable for Cuban troop withdrawal from Angola is the one issue remaining in the overall settlement package. Let there be no mistake about it: U.N. Security Council Resolution 435 remains the only internationally acceptable basis for a solution.

-- The United States has helped bring about understandings between Lesotho and Botswana, on the one hand, and South Africa on the other, averting potential conflicts.

-- And we helped move Mozambique away from heavy dependence on the Soviet camp and closer to true nonalignment. We demonstrated to Mozambique that its best interests are served by closer cooperation with the West, and by rejection of confrontation with South Africa. The trend of our relations with Mozambique is positive and needs further encouragement.

All of these steps have lessened the danger of warfare. But the situation remains fragile; it requires the continued pragmatism, realism, and dedication of the parties involved. New opportunities have been created; they should be seized.

America's Responsibility

Southern Africa is thus, clearly and unmistakably, in a process of transformation. The only question is how this change will come about. The idea that our policy is simply reinforcing the status quo is an utter misconception -- a display of ignorance of what is going on. We are engaged as a force for peace and for constructive change throughtout southern Africa. This is the only responsible course, and we will not be deflected from it.

Some believe that the United States should have nothing to do with Marxist regimes such as Angola or Mozambique, leaving them to cope with their predictable economic failures or throwing in our lot with their armed opponents. Such a notion ignores the realities on the ground in southern Africa as well as significant distinctions between those two countries.

In Angola, when the Portuguese granted independence, a number of black liberation movements competed for power.

A Marxist party took over the country in 1975 backed and sustained by the massive Soviet/Cuban intervention. UNITA, an important indigenous nationalist movement, was denied a share of power. The U.S. Congress passed the Tunney and Clark amendments barring any U.S. support for those Angolans opposing the Soviet/Cuban intervention -- as if to grant the Marxist regime immunity against its own people; the Brezhnev Doctrine -- which declares that Communist revolutions are irreversible -- was, in effect, enacted into American law. Since 1975, UNITA has waged a determined armed struggle in the countryside against the MPLA government's monopoly of power; it has steadily grown in strength and territorial control.

We do not believe that Angola's agony -- still continuing ten years after independence -- can be resolved militarily. In our contacts with both the MPLA government and UNITA, we sense little optimism about military solutions. Our diplomacy, therefore, has sought constructive alternatives to open-ended warfare and suffering. By focusing on the related international questions of Namibian independence and Cuban troop withdrawal from Angola, we have taken important steps forward. The principle of a regional settlement involving these two issues -- Namibia and Angola -- is now accepted; the next step is to agree on specifics.

If we succeed, Africa's last colony will achieve statehood, and foreign intervention and foreign forces will be removed from the Angolan equation. This can set the stage for all Angolans to work out their own future and achieve reconciliation at home.

In Mozambique, we make a different calculation based on different facts. Mozambique and South Africa have moved toward coexistence based on their own national interests. This prospect, which we encouraged, offered an opening for improved relations with Western nations and Western help for Mozambique's shattered economy. We have seized these openings. By competing, we have strengthened a trend favorable to our interests. In these circumstances, our European allies, South Africa, and Mozambique's other neighbors have thrown their weight behind that country's turn toward moderation. We have done the same.

There are also those who believe we should cut our ties with the government of South Africa because of its racial policies. This is just as mistaken as the idea that we should refuse to deal with Angola and Mozambique because of their Marxist inclinations. We cannot bury our heads in the sand. We do not enhance our ability to influence change in the region by eliminating ourselves as an actor.

Some propose that we try to cut South Africa off, to run it out of the Western world through boycotts, embargoes, and sanctions. They argue that even if such actions do not bring about change, our position will "put us on the side of right." I reject that view. It leads us down the road to ineffectual actions that are more likely to strengthen resistance to change than strengthen the forces of reform. It ignores the harm that such an approach will inflict precisely on the black majority whom the advocates of boycotts, embargoes, and sanctions purportedly want to help.

Opinion polls in South Africa by reputable organizations reveal that the overwhelming majority of black factory workers are opposed to disinvestment by American firms. An economy that even now needs to create 250,000 new jobs for young blacks each year, and that will have twice as many of them entering the job market by the turn of the century, needs more job opportunities, not fewer.

I do not understand why it is good for American investors to create jobs for black workers in Zimbabwe or Zaire, but not in South Africa. And I suspect the tens of thousands who have flocked to the squatters' camp at Crossroads outside Cape Town in a desperate search for work would not understand either.

Nor would the more than one million Africans from the surrounding nations who have moved into South Africa in search of employment.

I do not accept the argument that it is in our interests to help a black middle class develop in Guinea or Gabon, but not in South Africa.

I do not agree with those who argue that American companies should promote the social and educational advancement of their black workers in Sierra Leone or Senegal, but not in South Africa.

Now, I am quite aware that some of the proposals now before the Congress are not, strictly speaking, disinvestment bills. Instead they are couched in terms of conditional bans on "new investment," or new loans, unless certain political changes are made within a year or two. Other proposals would make the voluntary Sullivan Code mandatory and severely penalize firms that do not comply adequately. Well-intentioned as these proposals may be, let us not kid ourselves about their likely effect. Given the additional risks and uncertainties which such legislation would create, many U.S. firms are apt to conclude that their continued presence in South Africa is simply no longer worth the candle. The result will be reduced American influence.

U.S. firms, private U.S. groups and foundations, as well as the U.S. Government, have played an important role in influencing the changes we have seen. That is because they were there.

The only course consistent with American values is to engage ourselves as a force for constructive, peaceful change. It is not our business to cheer on, from the sidelines, the forces of polarization that could erupt in a race war; it is not our job to exacerbate hardship, which could lead to the same result.

At the same time, a clear bipartisan American voice that rejects apartheid as an unjust, anachronistic, and untenable system is another essential building block of a successful policy. And here I return to my opening theme of consensus. As long as Americans speak with contrary and confusing voices, our influence will be less than it could be.

What, then, can we as Americans agree on?

First, we can all agree that southern Africa is an important part of the world that demands our attention.

Second, we can all agree that the pace of change, of reform and development in each of the countries of the region, depends on regional peace and stability. Continued conflict only helps perpetuate racism and poverty.

Third, we can agree that apartheid must go. It is a system contrary to all that we stand for as a nation.

Fourth, we can agree that we are more interested in promoting real progress than in posturing, debating points, or grandiose schemes that are likely to prove ineffectual.

Fifth, we can agree that in southern Africa, as in every other part of the world, the engine of economic and social advancement is the productive private sector and its links to the global economy.

And, finally, we should agree that America's role must always be on the side of those seeking peaceful change. We should agree that we do not support violence, but that we do support -- and will support aggressively -- those who have committed themselves to promote change and justice.

These are the elements for a broad consensus that will allow America to speak with one voice.

We must recognize the importance of what has been taking place in South Africa in recent years, and we must reinforce that process creatively. Only by engaging ourselves can we hope to do so. We will not be the main actors in this human drama; that role must be played by the region's people -- black and white Africans. But we must not stand by and throw American matches on the emotional tinder of the region.

Our morality and our interests coincide. America's values and America's global responsibilities both compel us to stay engaged, to work actively for justice and decency and reconciliation. We should be indignant at injustice and bloodshed -- but indignation alone is not a strategy. The morality of a nation's policy must be judged not only by the noble goals it invokes but by the results and consequences of its actions.

If all Americans work together, this nation can be a major force for good. Thus we serve our highest ideals.

I.I.I.
INTERNATIONAL INVESTORS INCORPORATED
122 EAST 42ND STREET, NEW YORK, N.Y. 10168 • (212) 687-5200 • TOLL FREE 800 221-2220

May 14, 1985

Honorable Jake Garn
United States Senator
Chairman, Senate Committee on
Banking, Housing and Urban Affairs
Washington, D. C. 20510

Statement in Opposition to S. 635

Dear Mr. Chairman:

I respectfully request that you include the following statement in the record of the hearings on S. 635, 99th Congress, a bill "To express the opposition of the United States to the system of apartheid in South Africa":

I am Chairman and President of International Investors Incorporated, a leading American mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940, with over 158,000 stockholders residing in fifty states and the District of Columbia, and over $900 million of investments primarily in marketable securities. As disclosed in our Prospectus filed with the Commission, our company concentrates its investments in shares of gold mining companies, and holds substantial investments in shares of South African gold mining companies which are not registered with the Commission or listed on any securities exchange in the United States. There are also many additional American stockholders, perhaps as many as one million, who own possibly $5 billion or more of South African gold mining shares either directly or through other investment companies.

On behalf of our shareholders and Americans similarly situated, I wish to express strong opposition to S. 635. Section 4 of the bill, captioned "Restrictions on New Investments", would prohibit any United States person from making (directly or through a foreign affiliate) any investment in South Africa, excepting from this prohibition only:

> "(1) an investment which consists of earnings derived from a business enterprise in South Africa established before the date of the enactment of the Act and which is made in that business enterprise; and

(2) purchase, on a securities exchange registered as a national securities exchange under Section 6 of the Securities and Exchange Act of 1934, of securities in a business enterprise described in (1)."

Depriving our company and its shareholders and other Americans similarly situated of the right to purchase shares of South African gold mining companies which are traded on over-the-counter markets in the United States and on securities exchanges in a number of free world countries will have no effect on the government of South Africa, but would be grossly damaging to the interests of our company and its shareholders, and all other Americans similarly situated. It would be an intolerable interference with the free markets which exist in the free world, and be highly prejudicial to American investors as compared with their counterparts in the United Kingdom, West Germany, Japan and other free world countries which would not be subject to these restrictions.

Accordingly, whatever action your Committee may take to condemn apartheid, I urge that your Committee not act favorably on S. 635 or, at the very least, that it amend the bill to permit investment by United States investors in shares of South African enterprises which are traded in the over-the-counter markets in the United States as well as on registered national exchanges, or are publicly traded in other free world countries.

I would be happy to testify before your Committee concerning the detrimental effects of S. 635, if enacted as is, and to meet with members of your staff to discuss possible amendments that would avoid the unfavorable results of the current bill.

Respectfully submitted,

John C. van Eck
Chairman and President

/ev

ADVANCING VOLUNTARY LEADERSHIP IN A CHANGING WORLD

Chamber of Commerce of the United States
ALBERT D. BOURLAND, VICE PRESIDENT
CONGRESSIONAL RELATIONS
202-463-5600

1615 H STREET, N.W.
WASHINGTON, D.C. 20062

May 29, 1985

The Honorable John Heinz
Chairman, Subcommittee on International
Finance and Monetary Policy
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Heinz:

I request that the attached statement of the United States Chamber of Commerce, as presented to the Senate Foreign Relations Committee on May 22, be made part of the record of the subcommittee hearings on S. 635, proposing U.S. responses to the system of apartheid.

Essentially, the statement addresses the role of American business as a means of encouraging positive change in South Africa and identifies the criteria by which U.S. policy initiatives toward South Africa should be judged.

The statement includes as an appendix the recent submission to the South African government of our affiliated American Chamber of Commerce in South Africa. This urges changes in basic apartheid law and represents the practical, direct action that is only possible through a responsible American business presence. The American Chamber in South Africa will monitor action on its own recommendations.

We appreciate the opportunity for our views to be made part of the record of your hearings on S. 635.

Sincerely,

Al Bourland

Albert D. Bourland

Enclosure

cc: Paul Freedenberg, Majority Staff
Charles L. Marinaccio, Minority Staff

LET'S REBUILD, AMERICA

IN THE 80's

Statement of the Chamber of Commerce of the United States

ON: UNITED STATES POLICY TOWARD SOUTH AFRICA

TO: SENATE COMMITTEE ON FOREIGN RELATIONS

BY: MICHAEL A. SAMUELS

DATE: MAY 22, 1985

The Chamber's mission is to advance human progress through an economic,
political and social system based on individual freedom,
incentive, initiative, opportunity and responsibility.

The Chamber of Commerce of the United States is the world's largest federation of companies and associations and is the principal spokesman for the American business community. It represents more than 180,000 companies plus several thousand other organizations such as local/state chambers of commerce and trade/professional associations.

More than 85 percent of the Chamber's members are small business firms with fewer than 100 employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business--manufacturing, retailing, services, construction, wholesaling, and finance--numbers more than 14,000 members. Yet no one group constitutes as much as 26 percent of the total membership. Further, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the 50 American Chambers of Commerce Abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross section of its members serving on committees, subcommittees and task forces. Currently, some 1,800 business people participate in this process.

STATEMENT
on
UNITED STATES POLICY TOWARD SOUTH AFRICA
before the
SENATE COMMITTEE ON FOREIGN RELATIONS
for the
CHAMBER OF COMMERCE OF THE UNITED STATES
by
Michael A. Samuels
May 22, 1985

Mr. Chairman, I am Michael A. Samuels, Vice President, International, of the Chamber of Commerce of the United States. I appreciate the opportunity to share with the committee the Chamber's views on U.S. policy toward South Africa. This is a part of the world that I have visited several times, written about when I was in the academic world, and followed professionally intermittently for the last 20 years.

The Chamber is among those strongly critical of apartheid and favors the speediest possible evolution of South African society into one that extends basic human and political rights to all its people, regardless of color. The Chamber's particular function, as a business organization, is to identify the ways in which the American business presence in South Africa can play a positive role in the process.

In the public debate on U.S. policy toward South Africa, there are two basically distinct views on the role of American business. One side believes that business does more to reinforce the basic system of apartheid than it does to advance black South Africans' welfare and interests and, therefore, should be discouraged. The Chamber disagrees with that view.

We believe that American business in South Africa is a major force in advancing black opportunity and welfare. We believe that black economic advancement in South Africa is the major key for turning the complicated lock of apartheid. The American business presence in South Africa lends some weight to that effort. We are not implying that the sole function of American business in South Africa is to bring about the end of apartheid: its prime concern, as in any market, is to achieve a net return on its investment. But, in the South African case, it does do other positive things as well.

As Chief Mangosuthu G. Buthelezi has stated, no business today "can secure future plans without challenging apartheid. It was the large corporations that broke the apartheid barriers that led to real advancement for black workers." Ford Motor Company for example, consciously ignored the law and began training black apprentices. Other companies followed, and eventually job reservation became passe. The efforts of progressive management in talking, dealing, and negotiating with workers brought black trade union recognition sooner.

Although external actions are important, the key events in the South African situation will be internal. From our perspective, what the Congress should be asking is whether it wants to be responsible for eliminating or reducing a positive force for change within South Africa -- by either forcing disinvestment or outlawing new investment. We urge you to do neither.

Is U.S. business such a positive force in South Africa? Absolutely. Let us look at the following examples.

1) The Sullivan Principles are well known and have been widely acclaimed. They have produced results.

2) Earlier this year, our affiliated American Chamber of Commerce in South Africa (AmCham) issued a significant list of recommendations for basic changes in the apartheid law. I have attached its statement to my testimony. We are pleased at Senator Kennedy's positive description of this initiative when he inserted it into the Congressional Record of May 8.

3) The AmCham-initiated PACE College is a key commercial and technical school for black students. I am proud to have given the keynote address at the opening ceremony of PACE three years ago. Such

preparation for greater responsibility is necessary, and American business deserves credit for this initiative.

The Legislative Situation

This committee has before it several proposals for a legislative response to the South African situation. The Chamber believes that any action by the Congress should be guided by the following principles:

1) Conduct a forceful diplomatic effort against apartheid, including, for example, the use of United Nations votes when appropriate.

2) Encourage the elimination of apartheid through peaceful change in South Africa with moral support and tangible resources, including support for more rapid economic progress of blacks.

3) Encourage universal participation by United States, South African, and third-country companies in employment codes respecting human dignity and promoting social responsibility and economic advancement.

4) Avoid measures which intentionally or unintentionally result in disinvestment.

5) Avoid relying on unilateral economic sanctions to solve political problems.

6) Avoid actions which would widen the gulf between the government and non-whites and which would encourage further violence and repression.

Additionally, the Chamber believes that it is appropriate here to reiterate a key tenet of our policy. The U.S. government should not apply unilateral economic sanctions for foreign policy reasons. We believe this tenet applies as much to the South African situation as we believe it applied to the mistaken policy of controls related to the Soviet pipeline issue a couple of years ago.

A parallel situation exists in an extraterritorial reach by American law to make the Sullivan Principles mandatory. As good and as important as the Principles may be, we oppose legislating them to be mandatory.

There are some steps you could take that would be helpful. They include the following:

1) Creating a scholarship fund for black South African education in South Africa and in the U.S.;

2) Encouraging the development of black independent business and trade union organizations; and

3) Creating restrictions on actions that would tie the U.S. Government in any way to internal enforcement of apartheid.

Finally, Mr. Chairman, I would urge the Congress to work with the Executive Branch as it conducts our foreign policy related to South Africa, but not to tie its hands in conducting that policy.

***

MARCH, 1985

SUBMISSION BY THE AMERICAN CHAMBER OF COMMERCE IN SOUTH AFRICA TO THE SPECIAL CABINET COMMITTEE UNDER THE CHAIRMANSHIP OF THE MINISTER OF CONSTITUTIONAL DEVELOPMENT AND PLANNING

I. PREAMBLE

AmCham takes this opportunity of submitting this memorandum to the Committee with the intention of making a constructive contribution to the process of policy formulation. We do so in the knowledge that there are no simple solutions, but we believe that our viewpoint may be helpful to the Committee. American companies in South Africa contribute to the country and benefit from it and therefore want to contribute from our own experience both here and in the United States.

II. SUMMARY

Our submission is dealt with under the following three headings:

1. Specific policy issues
2. Democratic participation
3. Negotiation and consultation

III. SUBMISSION

1. Specific Policy Issues

(a) Urbanisation and Influx Control: we are aware that the influx control system has been under review for some years, and that certain modifications of a positive nature have been made, among them that blacks qualified for permanent residence in the urban areas may change their jobs now more freely than in the past. We wish strongly to urge that the government embark on an explicit programme to phase out influx control within a stated period of time. The weight of international evidence shows that the process of urbanisation can seldom be indefinitely arrested. In addition, urbanisation is a necessary prerequisite of economic growth. We believe that the costs of continued influx control in South Africa are high. Such costs include (a) the direct costs to the taxpayer of policing and administration, (b) opportunity costs to the economy and to business resulting from artificial restrictions on the free movement of labour, and (c) social costs in terms of damage to goodwill between the races. We are aware of studies that indicate that the net influx of blacks from rural areas to the towns that would result from phasing out of influx control would not necessarily be as great as has sometimes been thought. American employers wish to make the greatest contribution they can to raising South Africa's rate of economic growth, so creating the additional jobs that this country urgently needs. We believe that the present process of phasing out restrictions on the upward mobility of black labour into more skilled jobs should be accompanied by a deliberate programme to phase out geographical restrictions. As black employees are exposed to more responsibility and moved into more senior jobs, it frequently becomes necessary to transfer them from a company's operations in one part of the country to another. The influx control laws are a major hindrance in this connection.

We are aware of reports that new identity documents may be issued in South Africa, but it is important that the issue of such documents be accompanied by the phasing out of discriminatory influx control laws.

(b) Housing: the introduction of the 99-year lease system in many black townships was a major step forward, and the government's recent announcement that this system will now be extended to certain townships in the western Cape is also to be welcomed. According to press reports the Minister of Co-operation and Development has stated that the government will give serious thought to the question of freehold rights for urban blacks. We strongly urge it to grant such rights. This is the logical follow-on to the 99-year lease system and it is also a logical consequence of the recognition of the permanence of urban black communities. The granting of freehold rights would remove a major piece of racial discrimination, and at the same time be conducive to greater political stability in the urban townships. Continuing to deny black people the right to own land in freehold, a right which lies at the very heart of the free enterprise system, is likely to undermine black commitment to that system. Granting freehold rights in urban townships is important from another point of view, which is that it would create a source of income for local authorities in these areas, as they would be able to levy assessment rates upon such property.

(c) Removals: population removals do grievous damage to South Africa, both in terms of racial goodwill within the country and in terms of the country's image abroad. A prominent South African business leader has said that population removals are the one thing most likely to ensure success of the disinvestment lobby in the U.S., which would harm both American companies and South Africa itself. There is much evidence to indicate that removals are frequently accompanied by coercion, and that once people have been removed, particularly into some of the more densely populated homelands, they suffer stress and deprivation, and become an additional burden on the taxpayer. Some of the communities removed are economically relatively prosperous, and it is tragic to see such communities destroyed. While we recognise that increased black urbanisation resulting from the abolition of influx control would entail additional housing and other costs, we do not believe that there would be any costs in simply halting removals altogether. Indeed, there would probably be savings, since the State would no longer have to provide housing for people who have been moved.

We urge that the immediate cessation of removals apply not only to blacks removed to the homelands, but also to coloured and Indian (and the small number of white) people removed in terms of the Group Areas Act.

(d) Migrant Labour: Concomitant with the phasing out of influx control, the migratory labour system should also be phased out. Denying a worker the right to live with his or her spouse and family for very large parts of his or her working life is not socially desirable, conducive to productivity, or morally right, nor is it compatible with the sanctity of marriage and family life. Again, allowing migrant workers to bring their families to live with them at their places of work would involve costs, but the government would be entitled, if it were to agree to the abolition of the migratory labour system, to call upon the private sector to play its full part in contributing towards housing and infrastructural development.

(e) Business rights: AmCham is aware that the question of opening up central business districts to traders of all races has been under consideration since the report of the Riekert Commission was published in 1979, and that some progress has been made in this direction. We strongly urge that CBDs should be opened, not only to coloured and Indian business and professional men and women, but also to blacks. We endorse the moves that some local authorities have made towards desegregation of CBD trading rights, while expressing our concern that others have refused to allow the African Bank, for example, to open a branch in the CBD. The question of whether local authorities should have the right to refuse to open their CBDs is a vexed one. The government, for one or another reason, may not be willing to dictate to them. However, the question at stake is not only one of the autonomy of local authorities, but a principle fundamental to the free enterprise system and to the dismantling of racial discrimination. Discretion should not be left in the hands of local authorities, however if necessary, it would be possible to provide for businessmen refused admission to any particular CBS, for whatever reason, to have a right of appeal to the Supreme Court, and to empower the court to overrule any local authority.

AmCham also urges the government to remove the petty restrictions that inhibit both formal and informal business development within the black townships. According to the Free Market Foundation, the development of the informal sector is inhibited by a great deal of legislation of various kinds. AmCham believes that in the interests of maximising job creation, restrictions on business development in CBDs and black townships should be reduced to the barest essentials.

In particular we would like to urge that proposals by the Welgemoed Commission to restrict minibus taxis be rejected. The growth in recent years of these taxis has been in response to commuters' needs, and the entrepreneurial initiative of such taxi operators should not in any way be stifled by attempts to protect competing rail or bus services. Commuter dissatisfaction with transport services has led to a number of costly and disruptive boycotts in recent years, and AmCham believes it would be inviting trouble to interfere with the operations of black entrepreneurs who provide a service that people are willing to pay for.

(f) Citizenship: the policy of denationalising black people - i.e. removing their South African citizenship - on the assumption of constitutional independence by homelands, should be abandoned. This policy is not only contrary to international law but almost universally rejected by blacks. With reference to press reports that a form of dual citizenship or nationality may be introduced so that blacks who have lost their South African citizenship are not deprived of internationally-recognised passport facilities, AmCham would like to state its view that the major objection of black people to denationalisation is its link to the question of political rights rather than to the difficulties it causes from a travel documentation point of view. Accordingly, AmCham believes that merely restoring citizenship of black people for travel purposes while restricting their political rights to homelands, will not meet their objections.

2. Democratic Participation

AmCham endorses the statement on page 22 of the report of the Department of Constitutional Development and Planning for 1983 that the realities and demands of the constitutional development of blacks should be considered with an open mind and with a new vision. Our submission on the question of constitutional development is made in this spirit. We propose to discuss this question under the heading "Democratic Participation" and from the local, regional, and national perspectives.

Our broad position is that government should rest upon the consent of the governed and that all adults, irrespective of race, should be accorded the right to representation in the legislature that has ultimate control of their lives. While we are aware that all blacks in South Africa (broadly defined in this document to include homelands that were formerly part of South Africa) have a franchise for legislatures in the homelands, we do not believe that this alters the fact that ultimate control remains in Parliament in Cape Town and in the State President, who is vested by the Republic of South Africa Constitution Act of 1983 with the control and administration of black affairs. This is the case partly because almost half of the blacks in South Africa reside outside the homelands, partly because all ten homelands are heavily dependent on Parliament to balance their budgets, and partly because some two-thirds of the homelands' collective gross national product is earned in the white-designated areas. In this context it is relevant to refer to a statement by the Minister of Constitutional Development and Planning (Financial Mail 19th October 1984) that "there is very little political binding or connection" between blacks in the white-designated areas and the homelands.

Although AmCham, for the reasons just set out, believes that blacks are entitled to representation in Parliament, we are not in a position to prescribe how this should be effected. We are aware that the idea of a "fourth chamber" for blacks has been ruled out by both the government and black leaders (among them the president of Inkatha). We are aware too that some black organisations regard a constitution based on one-man-one-vote in a unitary state as the only acceptable type, but that the government has very firmly rejected this notion. We are convinced, however, that South Africans will ultimately devise a solution acceptable to the great majority of the country's population. Whether this is a unitary or federal system, or whether rights are protected on an individual or group basis, and other fundamental matters, are all questions that South Africans of all races will ultimately have to decide among themselves during appropriate negotiations between representatives of all races and political parties in the country. In our view such negotiations are a matter of urgency. If the process of consultation that the cabinet committee has embarked upon with various black leaders proves to be a first step in that direction, AmCham would applaud the fact.

Having stated the broad principles we have in mind we wish now to put forward a number of specific proposals that we believe will help create a climate for negotiation and carry the process of political reform in South Africa forward.

(a) Local Government:

(i) One of the important features of the current upheavals in certain black townships in the southern Transvaal is the violent attacks on the persons and property of members of some of the new black local authorities. Such persons are in an invidious position because a document distributed in 1983 by the Department of Foreign Affairs on behalf of the Department of Constitutional Development and Planning was widely interpreted as portraying the new local authorities as substitutes for the parliamentary franchise. These authorities are in an invidious position also because they have been granted important responsibilities but lack the financial resources with which to discharge their duties effectively. We strongly recommend that the government immediately issue a clear statement to the effect that the black local authorities are a form of three-tier government only and that their establishment should in no way be seen as a substitute for black political rights at other levels.

(ii) We are aware that the question of how local authorities should be financed has been the focus of official attention for some time, most recently by the permanent finance liaison committee, and that a number of proposals are being considered. We strongly advise against introducing methods (taxes based on the number of employees, for example) to finance local authorities, be they black or white, that may have the effect, intentionally or otherwise, of discouraging business investment in metropolitan areas. We do not believe that South Africa can afford any measures which discourage job creation. We do not wish to comment on whether as a matter of general principle it is appropriate for local authorities to be self-financing. We do, however, strongly believe that to apply such a principle to local authorities in black townships in South Africa at the present time is most inappropriate. The large backlogs in infrastructure in these areas are the result of public policy (the freeze on housing construction in certain townships in the late 1960's, for example) and we believe it is unjust and unworkable to burden local authorities with the responsibility for the substantial upgrading that the townships require. We would urge the government to introduce direct subsidies for development and upgrading of the townships and to regard such subsidies as a form of development assistance (similar, perhaps, to that provided to homeland administrations). As we have noted above, the granting of freehold land rights in black townships would, in time, provide local sources of revenue. Any prospect of black townships eventually being able to be self-sufficient would also require maximum business development in those areas, which underlines the need to remove restrictions on such development.

(iii) AmCham has noted that the Regional Services Councils Bill, introduced in Parliament in 1984 and subsequently referred to a select committee, provides for white, coloured, and Indian local authorities to be members of these councils. Although black local authorities will be able to obtain services from the councils on a contract basis, they will not be formal members. We can see no sound economic or administrative reason for excluding blacks and we are glad to note that the president of the Transvaal Municipal Association has recommended that they be included. Accordingly we strongly urge that the legislation be amended before being presented to Parliament again. In this context we feel it is relevant to point out that the exclusion of blacks from the new tricameral Parliament has created a great deal of bitterness among black people of all political persuasions and we believe that this exclusion should not be repeated at the level of regional services councils. On the contrary, we believe that the regional services councils provide a golden opportunity for consultation and negotiation between blacks and other groups. To allow this process to go ahead in the regional services councils would, we believe, be a valuable experiment for South Africa and contribute to the process of evolutionary change.

(b) Regional Government:

Although ten homelands have already been set up in South Africa with their own administrations, eight development planning regions subsequently established straddle homeland boundaries, which is a recognition of the increasing economic integration of South Africa. The regional development advisory committees established in respect of these development regions are also a recognition of the inevitability of joint decision-making on matters of common interest. If this can happen in the sphere of regional development, it is logical to extend the principle to decision-making of regional relevance in other fields, including the social and political. In this context we would commend to the committee the report of the Buthelezi Commission, which found that the existence of separate authorities in Kwazulu and Natal led to expensive and inefficient duplication and overlapping, and accordingly recommended that all regional functions be carried out on a joint basis by the provincial administration and the Kwazulu legislative assembly. As AmCham understands it, the commission recommended a form of multi-racial regional government in Natal and, without wishing to endorse the policies either of the Kwazulu legislative assembly or of the Natal provincial administration, we would like to commend to the committee the principle of allowing co-operation in the eight development regions over matters of economic development to evolve into joint decision-making on regional, political, and other issues. Again, without wishing to prescribe the precise formula, AmCham is confident that such a formula can be reached through black and white negotiation and compromise. The formula could differ from region to region, depending on political, economic, and other circumstances, but regional governments of this nature could evolve into component units of an ultimate federal political system for South Africa, if such a system were eventually decided upon in preference to a unitary state.

(c) National Government:

We have already stated above AmCham's confidence that eventually South Africans will devise an appropriate formula for black participation in Parliament. The proposals for local and regional government outlined above would, we believe, pave the way for such a development if they were successfully implemented. We would in the meantime wish to make the following recommendations:

(i) the government should make an announcement that it is its intention to grant the parliamentary franchise to blacks and that this will be done when an appropriate formula has been agreed upon by the leaders of all population groups;

(ii) the government should also announce that once the formula was agreed upon, the parliamentary franchise would be extended not only to blacks in the white-designated areas, but also to blacks resident in the homelands;

(iii) blacks should be given representation on the State President's Committee on National Priorities. Since this committee will play a major role in determining budget priorities and therefore have a major impact on public spending and on the economy, to exclude blacks from it seems unjust and anomalous; and

(iv) the government should not proceed any further with plans for a confederation, as it is evident that this particular formula is rejected by a great many black people, including a number of leaders of the homelands. We refer in this context to meetings held between the leaders of Kwazulu, Transkei, Lebowa, and Kangwane with a view to promoting federation rather than confederation. Confederation is, we believe, unacceptable because it is based upon the removal of citizenship from blacks.

3. Negotiation and Consultation

As stated above, an appropriate political formula for South Africa can only be arrived at by South Africans themselves through an agreed process of negotiation in which representatives of all race groups and political parties can freely participate. For such a process of negotiation to be effective, it must necessarily include leaders or organisations now proscribed and/or operating in exile. AmCham does not presume to claim that such organisations are the only authentic voice of black people. Some of them are undoubtedly among the most important voices, however. AmCham accordingly believes that the organisations in question should be legalised and that leaders thereof now in prison or in exile should be granted an amnesty, subject to their agreement to participate in lawful democratic procedures and to dissociate themselves from violence. All persons in detention without trial should at the same time be charged or released.

IV. CONCLUSION

AmCham believes that South Africa has already shown itself capable of making important changes in policy, with benefit to all. We refer in this context to the growth of the black trade union movement and the legislation providing for the registration of black trade unions that followed the report of the Wiehahn Commission. We have witnessed also the employment of black people in ever greater numbers in skilled and managerial posts, and the gradual abandonment of the industrial colour bar. Blacks and whites have proved themselves capable of effective and mutually beneficial negotiation in the industrial relations field, and we believe this principle can successfully be applied in the political field at local, regional, and national level. We have seen also the desegregation of sport and sports facilities in many fields, the desegregation of theatres and of certain hotels and restaurants, while an increasing number of black students are attending white universities. All this encourages us in the belief that peaceful evolutionary change in South Africa is possible. This submission is made as a result of AmCham's desire to do all in its power to assist that process to the benefit not only of our member companies and the many South Africans who work for them, but to South Africans of all races.

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Mr. Paul Freedenberg
Senate Committee on Banking,
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Subcommittee on International
Finance & Monetary Policy
534 Dirksen Senate Office Building
Washington, D. C. 20510

Re: Theodore B. Olson's Statement on S. 635

Dear Mr. Freedenberg:

Enclosed, please find ten copies of the statement by Mr. Theodore B. Olson on S. 635, a bill to express the opposition of the United States to the system of apartheid in South Africa. We appreciate your assistance in enabling Mr. Olson's comments to become a part of the record in the consideration of this bill.

If you have any questions, or if I may be of assistance to you in this matter please contact me at the number listed above.

Cordially yours,

Ronald O. Mueller

Ronald O. Mueller

ROM/mor
Enclosure

cc: Theodore B. Olson, Esq.

Statement of
The Honorable Theodore B. Olson

Mr. Chairman and Members of the Subcommittee on International Finance and Monetary Policy of the Senate Committee on Banking, Housing and Urban Affairs:

Thank you for asking me to express my views regarding S. 635, a bill to "express the opposition of the United States to the system of apartheid in South Africa . . . ."1/

I hasten to declare at the outset that while I have reservations regarding the means with which this bill seeks to achieve its stated goal, I do not disagree with its purpose of expressing American opposition to apartheid. I share the view, surely held by all members of Congress and the vast majority of the American people, that apartheid is an immoral, unjustifiable and intolerable policy.

The practice of segregation and discrimination on the basis of race or skin color is plainly and incontestably unacceptable. We abhor it as a nation and as individuals. Our Nation's earliest and most basic statement of fundamental principles, the Declaration of Independence, has as its central premise the self-evident truth "that all men are created equal" and "that they are endowed by their Creator with certain inalienable rights, that among these are Life, Liberty and the pursuit of Happiness."2/ That same immortal document declares

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1/ S. 635, 99th Cong., 1st Sess. preamble (1985).

2/ The Declaration of Independence para. 2 (U.S. 1776).

our belief that governments derive their powers from the consent of the governed, "that whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it" and that the systematic deprivation of liberty invests a people with the right and the duty to "throw off such government . . . ."3/ We must never for a moment forget these principles and we must never turn our backs or allow our concern to slacken for any people denied these fundamental rights, whether they live in South Africa or in any other nation.

S. 635 seeks to express this Nation's opposition to apartheid by imposing certain "economic sanctions" upon South Africa. Section 3 of the bill bars any United States person from making a loan or extending credit, directly or through a foreign affiliate, to the government of South Africa or to any corporation, partnership, or other organization owned or controlled by the government of South Africa. A United States person is defined in section 12 to include "any domestic concern" including "any permanent domestic establishment of any foreign concern" and "any bank organized under the laws of the United States."4/ The term "loan" is defined by reference to section 201(h) of the Credit Control Act.5/ Section 3 excepts

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3/ Id.

4/ The references in S. 635 to a "concern" are not defined.

5/ See 12 U.S.C. § 1901(h) (1976 & Supp. V).

from its prohibition, however, loans or extensions of credit for nondiscriminatory educational, housing, or health facilities.

Section 4 of the bill prohibits any United States person from making "directly or through a foreign affiliate" any investment, including bank loans, in South Africa. The term "investment in South Africa" is defined in section 12 to mean "establishing, or otherwise investing funds or other assets in, a business enterprise in South Africa" or making a loan or extension of credit to a business in South Africa. A "business enterprise" is defined in section 12 as any venture "which exists for profitmaking purposes or to otherwise secure economic advantage." Section 4 excepts from its prohibition re-investment in the same business of earnings derived from a business established in South Africa prior to enactment of the bill. Also exempted are purchases of securities on a national securities exchange of companies doing business in South Africa prior to enactment of the bill.

Section 5 of the bill prohibits any person, including a bank operating under the laws of the United States, from importing into the United States any South African krugerrand or other gold coin minted in South Africa or offered for sale by the Government of South Africa.

Pursuant to section 6 of the bill, the sections 4 and 5 prohibitions may be waived by the President if he determines that certain conditions are met by South Africa and if both

Houses of Congress concur in the determination that the conditions have been met. The conditions, one or more of which must have been determined by the President to have been met before he may propose a waiver to Congress, include that the Government of South Africa (1) has eliminated "the system which makes it impossible for black employees" to find housing near their place of employment; (2) has eliminated all policies that restrict employment opportunities for black people in South Africa and their freedom to live wherever they find employment; (3) has eliminated "all policies that make distinctions" between blacks and whites;[6] (4) has eliminated removals of black persons from certain areas; (5) has eliminated all residence restrictions based upon race or ethnicity; (6) has "entered into meaningful negotiations with truly representative leaders of the black population for a new political system;"[7] (7) has agreed to an internationally recognized settlement for Namibia; and (8) has "freed all political prisoners."

I do not intend to address, as I am certain others have or will, the efficacy of these proposals or whether their provisions should be applied to the host of other nations of the world which deny, on a broad, systematic and repressive basis, virtually all forms of civil liberties which we hold to be inalienable. While it may seem incongruous to pass this bill without applying similar sanctions to many other nations, I will leave to others to discuss whether the bill, or something like it, should be addressed even-handedly to all of our trading partners. Nor will I comment on the geopolitical or moral concerns that must play a significant role in your consideration of this bill. Others are immeasurably more qualified to address these very vital considerations. My comments will instead be strictly limited to the potential impact of legislation such as S. 635 on our Constitution's doctrine of separation of powers and the wisdom of conducting our nation's delicate foreign policy through the medium of rigid and confining "permanent" legislation.

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[6] Including, presumably, systems of quotas, goals, numerical standards or "affirmative action" based upon race.

[7] Emphasis added. The underscored terms are individually ambiguous and, taken as a whole, are subject to virtually unlimited interpretations.

I

In any debate regarding the Constitution's allocation of power to conduct foreign relations it is misleading and counterproductive to characterize different points of view in terms of differences between "liberals" and "conservatives" or Democrats and Republicans. Those Presidents who have most forcefully asserted the Executive's power to conduct foreign affairs have come from both political parties and have held vastly different political philosophies. Because the underlying issues -- the allocation of authority to exercise and alter American foreign policy on a day-to-day basis -- is so vital, it would be unfortunate to obscure it by characterizing proponents of particular approaches in terms of partisan labels.

At the heart of our Constitution is the concept of a separation of powers among three coequal branches of government at the federal level.[8] This separation of governmental power has historically lead to a certain friction among the branches and efforts by each of the branches to exercise authority delegated to another. Conflict has been particularly constant between the two political branches of the federal government (those which draw their authority directly from the people through the ballot box) -- the Executive Branch and the Legislative Branch. This conflict stems in large part from the fact that while scholars may speak in terms of separated powers, many of the powers allocated under the Constitution are not clearly granted to a single branch.

> The accommodations among the three branches of the government are not automatic. They are undefined, and in the very nature of things could not have been defined, by the Constitution. To speak of *lines* of demarcation is to use an inapt figure. There are vast stretches of ambiguous territory.[9]

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[8] *See* Buckley v. Valeo, 424 U.S. 1, 120 (1976) (It was the "intent of the Framers that the powers of the three great branches of the National Government be largely separate from one another.")

[9] Frankfurter and Landis, *Power of Congress Over Procedure in Criminal Contempts in "Inferior" Federal Courts*, 37 Harv. L. Rev. 1010, 1016 (1924) (emphasis in original).

Indeed, our scheme of government never intended the three branches to act in isolation of each other.10/

One of the oldest continuing sources of this conflict between Congress and the President is that regarding the formulation and implementation under the Constitution of American foreign policy. The Constitution itself offers no clear delineation of Executive and Legislative power with respect to foreign affairs. Both Congress and the President can point to text in the Constitution in support of their respective claims to direct foreign affairs.

The language of the Constitution does not provide particularly helpful guidance. Article II of the Constitution vests the President with [t]he executive "Power."11/ The President is the "Commander in Chief of the Army and Navy of the United States."12/ Also, he has "the Power, by and with the Advice and Consent of the Senate, to make Treaties . . . . [and to] appoint Ambassadors."13/

The Constitution also gives Congress a number of express powers the exercise of which may have an impact upon foreign relations. Article I delegates to Congress the power:

10/ See Springer v. Phillipine Islands, 277 U.S. 189, 209 (1928) (Holmes, J., dissenting) ("The great ordinances of the Constitution do not establish and divide fields of black and white.").

11/ U.S. Const. Art. II, § 1.

12/ Id. at § 2.

13/ Id.

> [t]o regulate Commerce with foreign Nations . . . to declare War . . . [and] [t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.14/

And because only Congress can appropriate funds, Art. I, sec. 9, cl. 7, virtually anything done with those funds, including the implementation of our relations with foreign states, is ultimately under the control of Congress.

Thus, neither branch was given power expressly to "conduct" foreign policy. Both the President and Congress have a role to play. Because, however, the legislative process is a cumbersome and relatively permanent one, the President historically, at least until recently, has exercised extensive day-to-day authority over foreign relations.

The Framers of the Constitution clearly expressed their belief that the Constitution vested the power to execute American foreign policy in the President. John Jay in the Federalist Papers argued that the formulation and implementation of foreign policy is a function of the Executive Branch as a practical necessity. In the first place, he observed that foreign policy must frequently be implemented in a context of confidential negotiations.

14/ Id. Art. I, § 8. Under Article II, the President is an "Officer" of the United States government.

> It seldom happens in the negotiation of treaties, of whatever nature, but that perfect secrecy and immediate dispatch are sometimes requisite. There are cases where the most useful intelligence may be obtained, if the persons possessing it can be relieved from apprehensions of discovery. Those apprehensions will operate on those persons whether they are actuated by mercenary or friendly motives; and there doubtless are many of both descriptions who would rely on the secrecy of the President, but who would not confide in that of the Senate, and still less in that of a large popular assembly.[15]

Our first Secretary of State also emphasized the importance of flexibility in foreign policy and the capacity to act promptly and with subtlety.

> They who have turned their attention to the affairs of men must have perceived that there are tides in them; tides very irregular in their duration, strength, and direction, and seldom found to run twice exactly in the same manner or measure. To discern and to profit by these tides in national affairs is the business of those who preside over them; and they who have had much experience on this head inform us that there frequently are occasions when days, nay, even when hours, are precious. The loss of a battle, the death of a prince, the removal of a minister, or other circumstances intervening to change the present posture and aspect of affairs may turn the most favorable tide into a course opposite to our wishes. As in the field, so in the cabinet, there are moments to be seized as they pass, and they who preside in either should be left in capacity to improve them.

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[15] The Federalist No. 64, at 392-93 (J. Jay) (C. Rossiter ed. 1961) (emphasis added).

> So often and so essentially have we heretofore suffered from the want of secrecy and dispatch that the Constitution would have been inexcusably defective if no attention had been paid to those objects. Those matters which in negotiations usually require the most secrecy and the most dispatch are those preparatory and auxiliary measures which are not otherwise important in a national view, than as they tend to facilitate the attainment of the objects of the negotiation. For these the President will find no difficulty to provide; and should any circumstance occur which requires the advice and consent of the Senate, he may at any time convene them.[16]

While there were many subjects on which they did not agree, two other important participants in our Nation's early history, Thomas Jefferson and Alexander Hamilton, both insisted that the grant of Executive power expressly vests the President with all authority over foreign affairs except as specifically withheld. Both reasoned that while the Constitution gave Congress legislative power to the extent "herein granted" in Article I; Article II simply states "[t]he executive Power shall be vested in a President." Therefore, they argued, the President has no limitations other than those specifically stated in the Constitution.[17] Likewise, John Marshall expressed the view before the House of Representatives that "[t]he President is the sole organ of the nation in its external relations and its sole representative with foreign nations."18/

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[16] *Id.* at 393 (emphasis added).

[17] *See* 5 T. Jefferson, *Writings* 162 (Ford ed. 1982); 7 A. Hamilton, *Works* 81 (Hamilton ed. 1851).

Similar views were held in the early Congresses. Thus, the Senate Committee on Foreign Relations reported to the Senate in 1816:

> The President is the constitutional representative of the United States with regard to foreign nations. He manages our concerns with foreign nations and must necessarily be most competent to determine when, how and upon what subjects negotiation may be urged with the greatest prospect of success. For his conduct he is responsible to the Constitution. The committee considers this responsibility the surest pledge for the faithful discharge of his duty. They think the interference of the Senate in the direction of foreign negotiations calculated to diminish that responsibility and thereby to impair the best security for the national safety. The nature of transactions with foreign nations, moreover, requires caution and unity of design, and their success frequently depends on secrecy and dispatch.19/

The United States Supreme Court has held that the Constitution vests the power to conduct foreign relations with the President. In United States v. Curtiss-Wright Export Corp.,20/ the Supreme Court articulated the proposition that, with respect to foreign affairs, unlike internal affairs, the

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18/ Annals, 6th Cong., Col. 613 (March 7, 1800).

19/ U.S. Senate, Reports, Committee on Foreign Relations, Vol. 8, p. 24 (February 15, 1816) (emphasis added).

20/ 299 U.S. 304 (1936).

federal government is not limited to powers "specifically enumerated in the Constitution."21/ Curtiss-Wright concerned the issue whether President Franklin D. Roosevelt, acting pursuant to a joint resolution of Congress,22/ could punish those involved in a conspiracy to sell machine guns to Bolivia. The Court held that the President could. The Court stated:

> It is important to bear in mind that we are here dealing not alone with an authority vested in the President by an exertion of legislative power, but with such an authority plus the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations -- a power that does not require as a basis for its exercise an act of Congress.23/

Similarly, the Court noted that:

> [P]articipation in the exercise of the power [to conduct foreign relations] is significantly limited. In this vast external realm, with its important, complicated,

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21/ "[T]he investment of the federal government with the powers of external sovereignty did not depend on the affirmative grants of the Constitution." Id. at 318. This conclusion follows because the Constitution only embodied "the general mass of legislative powers then possessed by the states," while foreign affairs powers passed directly from the Crown to the United States Government without ever having been possessed by the states. Id. at 316.

22/ H.R.J. Res. 347, 73d Cong., 2d Sess. (1934).

23/ 299 U.S. at 319-20 (emphasis added).

> delicate and manifold problems, *the President alone has the power to speak or listen as a representative of the nation*.24/

The Court continued:

> It is quite apparent that if, in the maintenance of our international relations, embarrassment -- perhaps serious embarrassment -- is to be avoided and success for our aims achieved, congressional legislation which is to be made effective through negotiation and inquiry within the international field must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved.25/

In *Chicago & Southern Air Lines, Inc. v. Waterman Steamship Corp.*,26/ the Supreme Court relied on an implied foreign relations power when it refused to review an Executive order involving certain American air carriers and foreign air transportation. The Civil Aeronautics Board's grant of an international air route to one American carrier rather than another was expressly approved by the President pursuant to Section 801 of the Civil Aeronautics Act.27/ The Court rejected an effort to seek judicial review of the President's decision, concluding that the President has "certain powers

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24/ *Id*. at 319 (emphasis added).

25/ *Id*. at 320.

26/ 333 U.S. 103 (1948).

27/ 49 U.S.C. § 1461 (1982).

conferred by the Constitution on him as Commander-in-Chief and as the Nation's organ in foreign affairs."28/

The Supreme Court has also noted in other contexts that the President has a substantial degree of constitutional control over America's foreign relations. Thus, the Court has held that the President has independent constitutional power to execute private claims settlements incident to the recognition of a foreign country.29/ The Court has similarly held that the President has broad powers during a national emergency to settle private claims against a foreign country through executive agreement.30/

Thus, ample constitutional authority as well as common sense argues for strong Executive Branch power in the conduct of American foreign relations. In addition to the historical and judicial arguments supporting such an interpretation of the Constitution, there is a pragmatic argument against Congressional intervention in the details of foreign policy based upon the general inefficacy of Congressional involvement in foreign affairs. This argument has best been set forth by former Senator John G. Tower, until a few months ago Chairman of the Senate Armed Services Committee:

28/ Id. at 109.

29/ *See* United States v. Pink, 315 U.S. 203 (1942); United States v. Belmont, 301 U.S. 324 (1937).

30/ *See* Dames & Moore v. Regan, 453 U.S. 654 (1981).

To the extent that Congress often represents competing regional and parochial interests, it is almost impossible for it to forge a unified national foreign policy strategy and to speak with one voice in negotiating with foreign powers. Because of the nature of the legislative process a law may be passed in response to a certain set of events, yet remain in effect long after the circumstances have changed. The great danger of Congressional intervention in foreign affairs is that enacted legislation becomes an institutional rigid "solution" to a temporary problem.

The President, along with the Vice President, is the only officer of government who is elected by and responsible to the nation as a whole. As such, only he possesses a national mandate. As head of the Executive Branch, the President can formulate a unified foreign policy, taking into consideration how each aspect of it will fit into an overall strategy. He and his advisers can formulate their strategy with the necessary confidentiality not only among themselves, but between the United States and foreign powers. The President has the information, professional personnel, operational experience, and national mandate to conduct a consistent long-range policy.

The legislative body, on the other hand, is elected to represent separate constituencies. Congress must of necessity take a tactical approach when enacting legislation, since the passage of laws is achieved by constantly shifting coalitions. This serves us well in the formulation of domestic policy, where we proceed by voting on one discrete piece of legislation at a time. Although many of us may have our own long-term strategies in mind as we vote on specific legislative matters, the overall effect is a body of legislation passed piece by piece by a changing majority of legislators. We build domestic policy one step at a time to the end that the final product of domestic legislation is reflected in a consensus of various coalitions. If we later find out we have made an error in a specific piece of domestic legislation, we

> can change it. For example, if we determine that we have underfunded housing subsidies we can increase them the next year. But the process by which generally accepted domestic policy is arrived at does not lend itself to the formulation of a long-term, coherent, foreign policy. Once we alienate a friendly government, perhaps through shortsighted legislation, it may take years for us to rebuild that relationship and recoup the loss.
>
> A foreign policy should be an aggregate strategy, made up of separate bilateral and multilateral relationships that fit into a grander scheme designed to promote the long-term national interests. With a comprehensive design in mind, those who execute foreign policy can respond to changes in the international environment, substituting one tactic for another as it becomes necessary, but retaining the overall strategy.31/

Lloyd Cutler, former Counsel to President Carter, echoed the same sentiments recently when he said:

> [O]n the general subject of micro-management by Congress of foreign policy matters . . . that is bound to be a failed process because the Congress, as presently structured and organized, is not capable of managing, let alone micro-managing, anything.32/

The foregoing should not be interpreted to mean that Congress has no role to play in foreign affairs. Clearly, the

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31/ Tower, Congress Versus The President: The Formulation and Implementation of American Foreign Policy, Foreign Affairs 229, 232-33 (Winter 1981/82).

32/ L. Cutler, Congress, the President, and Foreign Policy, ABA Standing Committee on Law and National Security, at 154 (1984).

Constitution contemplates some role for Congress in the formulation of American foreign policy. A boundary must be drawn between the formulation of that policy, in which Congress should have a significant role, and the execution of that policy, in which the Congress should have a very limited role. One aspect of the principle of separation of powers as it operates in the realm of foreign relations is the distinction between the _formulation_ and _conduct_ of policy. The Constitution and our structure of government envisions a very limited role in the latter for Congress, while admitting the President to a predominant role.

The Supreme Court has recognized that part of the reason for the vital and, until recently, relatively unrestricted role of the Executive Branch in foreign affairs has been the understanding and appreciation by the Legislative Branch of the importance to the nation that the President possess such powers. Thus, the Court has cautioned that although the Congress has a role in the _formulation_ of American foreign policy, it must recognize the importance of the President's need for freedom of action to carry out his Constitutional duty to _conduct_ American foreign policy. The Court emphasized this point in _Haig v. Agee_, stating: "Congress, in giving the Executive authority over matters of foreign affairs, must of necessity paint with a brush broader than it customarily wields in domestic areas."33/ And in *Dames & Moore v. Regan*, the Court advised: "If you propose any remedy at all, you must vest the Executive with some discretion, so that he may apply the remedy to a case as it may arise."34/

II

The 1970s saw a sharp increase in congressionally initiated foreign policy legislation that had as its purpose the curtailment of the President's ability to *conduct* American foreign relations. During this period, numerous separate prohibitions and restrictions were enacted to limit Executive Branch authority to *implement* foreign policy.35/ At the very least, this legislation was ill-conceived. At worst, the legislation raises serious constitutional concerns.

S. 635 follows in the tradition of Congress' 1970s intervention in foreign relations. S. 635 seriously circumscribes the President's ability to achieve the common

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33/ 453 U.S. 280, 292 (1981), (quoting from Zelmel v. Rusk, 381 U.S. 1, 17 (1965)).

34/ 453 U.S. at 677, (quoting the Cong. Globe, 40th Cong., 2d Sess. 4359 (1868)).

35/ A listing of many of these legislative enactments is appended. *See generally* *Congressional Quarterly*, *Powers of Congress* (2d ed. 1982), Chs. 7-9; T. Franck, ed., *The Tethered Presidency: Congressional Restraints on Executive Power* (1981).

goal of the current Congress and President Reagan[36] -- the persuasion of the South African government that the apartheid system should be changed to permit full participation in the political process and the enjoyment of fundamental human rights by all South Africans. Thus, in this particular instance the Executive and Legislative Branches are not in conflict over the goals or purposes of American foreign policy; rather the two branches differ only over the method by which to pursue American foreign policy goals. Constitutional and prudential considerations, however, argue in favor of restraint by the Legislative Branch in the conduct of this nation's foreign policy toward South Africa.

The Reagan Administration has, like its predecessors, sought to implement policies which bring about changes in South Africa's policies, but has also sought to retain the ability of the President to respond in a flexible manner to any initiatives by the South African government.[37] Since the Truman Administration, the United States has recognized that there are American interests regarding South Africa in addition to our interest in eradicating apartheid. Previous administrations have uniformly recognized that our capacity to influence the internal affairs of a foreign sovereign is limited and that draconian and inflexible measures may actually reduce our ability to bring about the results we hope to achieve or may even be counterproductive. We would not wish to be bound to a policy which might impose such severe economic conditions that the people we wish to help would suffer the most or which might foster an environment for a violent resolution of the situation which could lead to an even more repressive government with hostile attitudes toward the United States.

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[36] See K. Dam, Statement Concerning S. 635, before the Senate Committee on Banking, Housing and Urban Affairs, 99th Cong., 1st Sess. (April 16, 1985).

[37] Id.

Particular attention should be paid to sections 6 and 10 of S. 635. Section 6 of the bill would severely limit the President's authority to waive or gradually lift on his own initiative the substantive prohibitions of the legislation as might be appropriate to changing circumstances. Under the bill, the President may only waive these prohibitions if certain highly subjective standards were met by the South African government. Aside from the extreme difficulty of policing the details of policy change implementation by a foreign sovereign, even should the President determine that one or all of these conditions is met by the South African government, he may not waive the economic sanctions contained in S. 635 until a joint resolution is passed by both Houses of Congress. Given the relative ease of blocking affirmative legislative acts of this nature, a vigorous and determined minority could well block vitally necessary "fine tuning" of foreign policy.

Section 10 of S. 635 is even more intrusive than Section 6 upon the President's constitutional power to conduct American foreign policy. Section 10 purports to command the President to negotiate with other nations to adopt economic sanctions against South Africa similar to those sanctions imposed by this legislation. This provision is both unenforceable and of dubious constitutionality.

The issue of apartheid justifiably engenders strong emotions. It is important, however, that S. 635 not be considered in passion and rashly enacted. It would be ill-advised to rush headlong into a solution which may not only fail to serve the immediate goals of the proponents of this legislation, but put in place yet another serious impediment to the power of this and future Presidents to conduct a thoughtful and productive foreign policy. The lasting effect would be that Congress would institutionalize its foreign policy differences with a particular President by legislating permanent solutions for temporary evils.

Cyrus Vance said at the 1980 Harvard commencement, "Neither we nor the world can afford an American foreign policy which is hostage to the emotions of the moment." Given the strong sentiments which have been understandably aroused against apartheid, it may well require a considerable act of statesmanship for a member of Congress to resist the temptation to vote for anything which holds out the promise of eradicating this evil. In the long term, however, this Government is vastly better served by preserving a presidency with the authority to impose both subtle and strong measures and the freedom and flexibility to increase and decrease the pressure as changing circumstances dictate. It would indeed be unfortunate if in its rush to legislate, the Congress trampled the Constitution and crippled the most effective means at the disposal of the nation to combat abhorrent policies of foreign nations - a stong and effective President.

Appendix to

Statement of

The Honorable Theodore B. Olson

Legislation Limiting the Power of the President to Conduct Foreign Relations

1. 50 U.S.C. §§ 1541-48 War Powers Resolution Enacted 1973

Description: Provides for congressional oversight "in any case in which United States Armed Forces are introduced into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances." The President is required to submit a written report to Congress detailing the circumstances of United States involvement and Congress is authorized to order United States troops removed by concurrent resolution. After 60 days, the President must automatically terminate the use of United States armed forces unless Congress has declared war to extend the 60-day period.

2. 22 U.S.C. § 2441 note H.R.J. Res. 683 Enacted 1975

Description: Provided that Congress may adopt concurrent resolution requiring withdrawal of civilian personnel assigned to monitor Israeli withdrawal from the Sinai.

3. 50 U.S.C. §§ 1621 et seq. National Emergencies Act Enacted 1976

Description: Establishes procedures for presidential declaration and continuation of national emergencies, but subjects such national emergencies to termination by concurrent resolution.

4. 50 U.S.C. §§ 1702-06 International Emergency Economic Powers Act (IEEPA) Enacted 1977

Description: Limits economic powers previously granted to President in peacetime emergencies by the Trading With the Enemy Act of 1917. Provides that the President may impose emergency economic controls based on "unusual and extraordinary threat" from outside the United States, but requires him to provide Congress with the reasons for the invocation of national emergency and authorizes Congress to vote to terminate the emergency by concurrent resolution.

5. 22 U.S.C. § 2776(b) Arms Export Control Act of 1976
Enacted 1976 Amended 1981

Description: Required President to give advance notice to Congress of any offer to sell to foreign countries defense articles and services valued at $25 million or more and empowered Congress to disapprove such sales within 20 calendar days by concurrent resolution. Nelson-Bingham Amendments then required advance notification of any sale of "major" defense equipment totaling over $7 million and gave Congress 30 days in which to exercise its legislative veto. These provisions were involved in recent controversy over sale of AWACS (Airborne Warning and Control System) surveillance aircraft to Saudi Arabia. In 1981, the certification requirement limits were raised from $35 and $7 million to $50 and $14 million, and the calendar periods for exercising the legislative veto were modified.

6. 19 U.S.C. §§ 1303(e), 2253(c), 2432, 2434, 2435(c), 2437
Trade Act of 1974 Enacted 1975

Description: Permits Congress to disapprove by concurrent resolution proposed presidential actions regarding import relief and actions concerning certain countries and authorizes Congress to disapprove by simple or concurrent resolution various presidential proposals for waiver extensions and extensions of nondiscriminatory treatment to products of foreign countries.

7. 12 U.S.C. § 635e(b) Export-Import Bank Amendments of 1974
Enacted 1974

Description: Requires that presidentially proposed limitations for exports to the U.S.S.R. in excess of $300 million must be approved by concurrent resolution.

8. 22 U.S.C. § 2304 Section 502B of the Foreign Assistance Act Enacted 1974

Description: Prohibits executive branch approval of security assistance to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights and authorizes Congress by joint resolution to terminate or restrict security assistance to such a country. These conditions may only be circumvented upon presidential certification to the Chairman of the Senate Foreign Relations Committee and the Speaker of the House of Representatives that "extraordinary circumstances" exist warranting an exception. § 2304(a)(2).

9. 22 U.S.C. § 2370 note Section 728 of the International Security and Development Cooperation Act of 1981
Enacted 1981

   Description: Established five conditions for military aid and sales to El Salvador in fiscal years 1982 and 1983 and required an executive certification within thirty days of the statute's enactment and every one hundred and eighty days thereafter, for the allocation of funds to El Salvador for military aid, education, and training under the Foreign Assistance Act. President must certify that government of El Salvador is making a concerted and significant effort to comply with internationally recognized human rights, is achieving substantial control over its armed forces in order to halt the indiscriminate torture and murder of Salvadoran citizens, is achieving continued progress in economic, political, and agrarian reforms, is committed to the holding of free elections at an early date, and has made good-faith efforts to investigate and bring to justice the murderers of six U.S. citizens.

10. 22 U.S.C. § 2422 Hughes-Ryan Amendment to the Foreign Assistance Act Enacted 1974

   Description: Provides that no funds appropriated under the authority of the Foreign Assistance Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that any such operation is important to U.S. national security and reports about the operation in a timely manner to the appropriate committees of Congress.

11. 50 U.S.C. § 413 Intelligence Authorization Act of Fiscal Year 1981 Enacted 1980

   Description: Continues Hughes-Ryan Amendment's executive reporting requirement, but limits the reporting to the Senate and House Select Committees on Intelligence and provides that the Director of Central Intelligence must give those committees prior notice of "any significant anticipated intelligence activity." § 413(a)(1).

12. Pub. L. No. 94-212 Tunney Amendment to the Defense Appropriations Act of 1976 Enacted 1975

    Description: Prohibited use of funds appropriated in the Act for any activities involving Angola other than intelligence gathering.

13. 22 U.S.C. § 2293 note Clark Amendment to the Arms Export Control Act of 1976 Enacted 1976 Amended 1980

    Description: Prohibited any assistance of any kind to any group which has the effect or purpose of aiding military or paramilitary operations in Angola. Amended in 1980 to permit such assistance in the interests of United States national security if the President submits a written certification to the appropriate committees of Congress and Congress approves by a joint resolution.

14. Pub. L. No. 97-377 Boland Amendment Enacted 1982

    Description: Bars the use of funds for any paramilitary activities designed to overthrow the Nicaraguan government.

15. 1 U.S.C. § 112b Case Act Enacted 1972 Amended 1977 & 1978

    Description: Requires President to transmit to Congress the text of all executive agreements within sixty days of their execution; amended in 1977 and 1978 to provide for more effective means of inducing executive compliance with the Act.

16. 42 U.S.C. § 2153(d) Atomic Energy Act Amended 1978

    Description: Provides that agreements involving cooperation with foreign nations with respect to nuclear technology shall be subject to congressional veto within sixty days of submission to Congress. This provision is currently being considered for amendment by the so-called Proxmire Amendment to the Export Administration Act.

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PETITION TO THE CONGRESS OF THE UNITED STATES

We, the undersigned lawyers of Philadelphia,

Dedicated to justice and the International Rule of Law,
Affirming our commitment to the Universal Declaration of Human Rights, as well as the United Nations' resolutions and decisions of the International Court of Justice condemning Apartheid,
Having learned the lessons of the Holocaust and mindful of the precedents of Nurenberg, and
Assuming our responsibilities and obligations as a free people in a free society,

Call upon all sectors of American Society, its governmental units — national, state, and local — its institutions, public and private, industry and labor, to mobilize forcefully and publicly assert the full moral, economic, and political force of this great Nation on the leaders and people of the Republic of South Africa to abolish, immediately and forever, the loathsome and unjust system of Apartheid by which the black majority, constituting 73 per cent of the population, are virtually enslaved, being deprived of their freedom

To live and work where they want,
To speak and write as they will,
To travel freely within their own nation,
To earn fair and equal wages,
To vote, organize politically, and be represented within their national government, and
To have fair trials and the equitable resolution of their grievances.

This abhorrent and inhumane system must be abolished.

To that end, we urge that:

The process of American disengagement from the Republic of South Africa be commenced,
Our resources be removed,
Our technology and military supplies be denied,
The United States impose economic sanctions on the Republic of South Africa, including the cessation of all trade with that nation, and that,
Our national government should call upon the governments of all nations to undertake similar steps.

We take this position mindful of its harshness and of the burden it will impose on ourselves, as well as the Republic of South Africa, but in the unhappy conviction that the time for moral suasion, temporizing, and importuning has long since passed. The powerful entreaties of the past have all been cruelly ignored by Pretoria.

We acknowledge that these steps will not be quickly or easily accomplished, but we are prepared to stay the course.

To do less would betray our conscience and condemn the South African multitudes to slavery and escalating violence.

As lawyers, dedicated to the Rule of Law, we have responded with compassion to the suffering of black South Africans and in support of the good people of South Africa, white and black, who seek the establishment of justice.

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Office of the President

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June 4, 1985

The Honorable Edward M. Kennedy
113 Russell Senate Office Building
U.S. Senate
Washington, DC 20510

Dear Senator Kennedy:

I have read about Derek Bok's testimony in Washington in favor of the Anti-Apartheid Act which you and Senator Weicker have sponsored. I wanted to let you know of my own personal support for this bill as well. I believe it is very important for us to take action in strengthening American policy in South Africa in order to move more effectively against apartheid. The bill that you have sponsored seems to me an excellent step in this direction, and I commend you for your effort.

I'm sure that our campuses will be more and more involved in working against apartheid. It is good to have a national platform for such activities that provides a constructive solution, in addition to the important debates on campus about our own responsibilities as corporate investors.

If there is anything that I can do, or that a group of presidents can do as colleagues to offer support for this act, I hope you'll let me know. Thanks again for taking this initiative.

Yours,

Nan Keohane

Nannerl O. Keohane

NOK:mm
cc: Derek Bok
Mary Gardiner Jones
Joel Krieger

June 21, 1985

TESTIMONY FOR SUBMISSION TO THE SENATE BANKING COMMITTEE
HEARINGS ON SOUTH AFRICA BY
MAGNUS KRYNSKI, CHAIRMAN OF THE FREEDOM FEDERATION
COMMITTEE ON INTERNATIONAL TRADE

On behalf of the Freedom Federation, I would like to express my appreciation of the Committee's examination of possible remedies to human rights abuses in South Africa. The majority of South Africans are now living under conditions of the severest repression, where race is the sole guarentor of basic civil and human rights.

However, we are concerned that public and official attention to human rights abuses does not become a selective issue. As is evident in Prime Minister Botha's South Africa, the selective application of a moral standard is often little more than immorality. The Freedom Federation, a coalition of 18 national organizations, representing ethnic nationalities who have come here to escape Soviet oppression has hundreds of members who can testify that there is little difference between the prison camps of Soweto and the gulag, or between the torture chambers of Johannesburg and Phnom Phen.

It is particularly appropriate that at this time, the subject of human rights should have captured the attention of the American public. Exactly ten years ago, the United States and the Soviet Union were engaged in negotiations which we hoped would liberalize the domestic policies of Eastern European regimes.

On August 1, 1975, the Conference on Security and Cooperation in Europe was concluded. All 35 participating states (including the United States and the Soviet Union) signed a final document which has come to be known as the Helsinki Accords. Each signatory pledged to respect internationally recognized principles governing relations between governments and their citizens, as well as between states.

The Accords have resulted in the legitimization of the unlawful Soviet rule over its Eastern European neighbors, a massive build-up in East-West trade, industrial cooperation agreements and lenient terms for obtaining Western loans: all results which have been beneficial to the Soviet bloc. **However, the primary goal of Western signatories was never fulfilled - a relaxation of human rights abuses.**

The "human rights basket" of the Accords, which calls for the reunification of families, freedom of travel and human contact and the free flow of information has largely been ignored by Eastern bloc countries. In short, the U.S. policy of constructive engagement has failed in Eastern Europe.

The Freedom Federation believes that the first initiative sponsored by Senators Lugar, Mathais and Dole could lay the groundwork for effective sanctions against any nation which abuses the principles laid out in the Helsinki Accords. Comprehensive sanctions would begin unless broad, substantial human rights reforms begin to occur within the next two years. Specifically, banks would terminate new loans and companies new trade to governments found to be in violation of the Helsinki

Accords. Companies would pledge to close in-country offices, resign from government sponsored commercial commissions and withdraw from all joint ventures with these governments. The State Department, which already monitors violations by the signatories of the Accords, would be able to verify compliance.

We urge that the Senate initiate a joint Congressional resolution voicing approval of such a "Voluntary Code of Conduct" for the Helsinki Accords. During the next two years, businesses would be encouraged to pledge observance of the code, which would formally take effect in 1987. Should any nation fail to improve their compliance record by that time, Congress could return to the issue and begin to legislate these restrictions. During this period, the Department of State could publicize human rights violations, in an effort to gain cooperation from other Western governments in enforcing the code. In this way, U.S. firms, alone, would not be hurt and the sanctions would have a greater impact.

Clearly, new ways need to be discovered in which the forces for justice and moderation in totalitarian and authoritarian regimes can be supported. In our estimation, Senator Lugar's initiative offers an avenue through which this support can be given.

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June 6, 1985

1985 JUN 11 AM 10:40

The Honorable Jake Garn
United States Senator
Chairman, Senate Committee on
Banking, Housing and Urban Affairs
Washington, D.C. 20510

Statement of Opposition to S. 635

Dear Mr. Chairman:

I respectfully request that the following statement be included in the record of hearings on S. 635, 99th Congress, a bill "To express the opposition of the United States to the system of apartheid in South Africa":

I am Chairman and President of United Services Gold Shares, a mutual fund which invests in precious metals securities. United Services Gold Shares is a no-load fund meaning that it charges no commission when investors buy its shares. The Fund has become the largest no-load fund in the United States which invests exclusively in precious metals securities. It has assets of over $419 million. Because United Services is a no-load fund its management does not have salesmen nor does it do extensive advertising. It has over its 15 year history, gradually acquired over 115,000 shareholders on the merits of its investment program and management. These are predominately independent individual investors accustomed to managing their own investments and making their own investment decisions. Over 90% of the portfolio of United Services Gold Shares is invested in South African gold and platinum stocks. The Fund has been registered with the SEC under the Investment Company Act of 1940 since 1970. The South African securities in its portfolio are not registered with the commission nor are they listed on any securities exchange in the United States. There are about twelve so-called "gold funds" in the United States which have invested a large part of their assets in South African gold and platinum mining stocks. There are hundreds of thousands, perhaps millions of Americans who have been investing in these securities for years some as long as thirty years. The total American ownership in South African gold mining stocks may well exceed five billion dollars.

On behalf of our shareholders and all Americans who have invested confident in the American free enterprise system I wish to express strong opposition to S. 635. Section 4 of the bill, captioned "Restrictions on New Investments," would prohibit any United States person from making (directly or through a foreign affiliate) any investment in South Africa, excepting from this prohibition only:

"(1) an investment which consists of earnings derived from a business enterprise in South Africa established before the date of the enactment of the Act and which is made in that business enterprise; and

(2) purchase, on a securities exchange registered as a national securities exchange under Section 6 of the Securities and Exchange Act of 1934, of securities in a business enterprise described in (1)."

These restrictions would severely damage our company and its shareholders as well as the hundreds of thousands of other United States citizens who have invested as we have with confidence in our free market economy. The United States investors would be deprived of the right to purchase South African mining securities which are traded over-the-counter in the United States while investors in other free world countries like the United Kingdom, European countries and Japan would not be subject to these restrictions. By the same token neither would there be any restriction on investors who wished to invest in ASA, Inc. which is a closed-end mutual fund on the New York Stock Exchange which invests in South African gold mining stocks. What equality or justice could there be in singling out one closed-end fund which could continue to invest in South African mining securities while depriving the open-end funds, where small investors of our country typically invest, of the same right?

Depriving United States citizens of this right would have little impact on the government of South Africa. Ironically depriving Americans of this investment opportunity and right is an effort to punish the industry which has been in the forefront of increasing the rights, privileges and economic benefits of the blacks in South Africa.

This does not mean that the management of United Services Gold Shares or its shareholders condone apartheid. We keep our shareholders informed of developments in South Africa through our NEWSLETTERs and through sponsored trips to that country. Hundreds of our investors have been in Soweto and in the gold mines. It is indeed frustrating to see our government doing all possible to increase United States trade with Communist Russia and Communist China while doing all possible to cut off trade with our free world, free economy, democratic ally South Africa which has fought side by side with our soldiers in two world wars and which has always paid its debts to our country on time and in cash.

I therefore urgently request that your Committee not act favorably on S. 635. Or if you deem it essential to take some action to condemn apartheid then I urge that your Committee amend the bill to permit investment by United States investors in shares of South African companies which are traded in the over-the-counter markets in the United States as well as on registered national exchanges, or are publicly traded in other free world countries.

Please feel free to call upon me to testify before your Committee concerning the adverse effects of S. 635 if passed as it is now written. I will also be glad to meet with you or your staff to participate in discussions toward amending the bill to avoid the unfavorable impact that the current bill would cause.

Respectfully submitted,

Clark Aylsworth

Clark Aylsworth
Chairman and President

Washington, DC
19 June 1985

Sir,

AN OPEN LETTER

As South Africans visiting your great country, we are writing to you because we are concerned about the campaign for punitive measures being waged against our country in the United States.

Like all Americans, we also feel that things have to change in South Africa to bring about a situation of equality of opportunity for all who live in South Africa, regardless of colour, race or creed, in every area of endeavour - political, social, economical and educational. What many Americans apparently do not realise is that things are changing and that the pace of change is accelerating.

We see this as a welcome development and would not like to see the pace of change being slowed down or brought to a halt. We fear that the campaign for disinvestment or sanctions will do just that: it will slow down the pace of change.

It will do far more than that: it will punish the wrong people - those who want to bring about change and those who need it most - namely South Africa's black population who will be hardest hurt in terms of unemployment and economic deprivation if the disinvestment campaign succeeds.

If anyone believes that the Whites of South Africa can be browbeaten into a more reasonable frame of mind by making the Blacks suffer more, he is sorely mistaken. Quite the opposite will happen. Sanctions, therefore, can only reduce the chances of peaceful change in South Africa.

It is supremely ironical that the sanctions campaign is taking place now of all times - when things really are

beginning/...

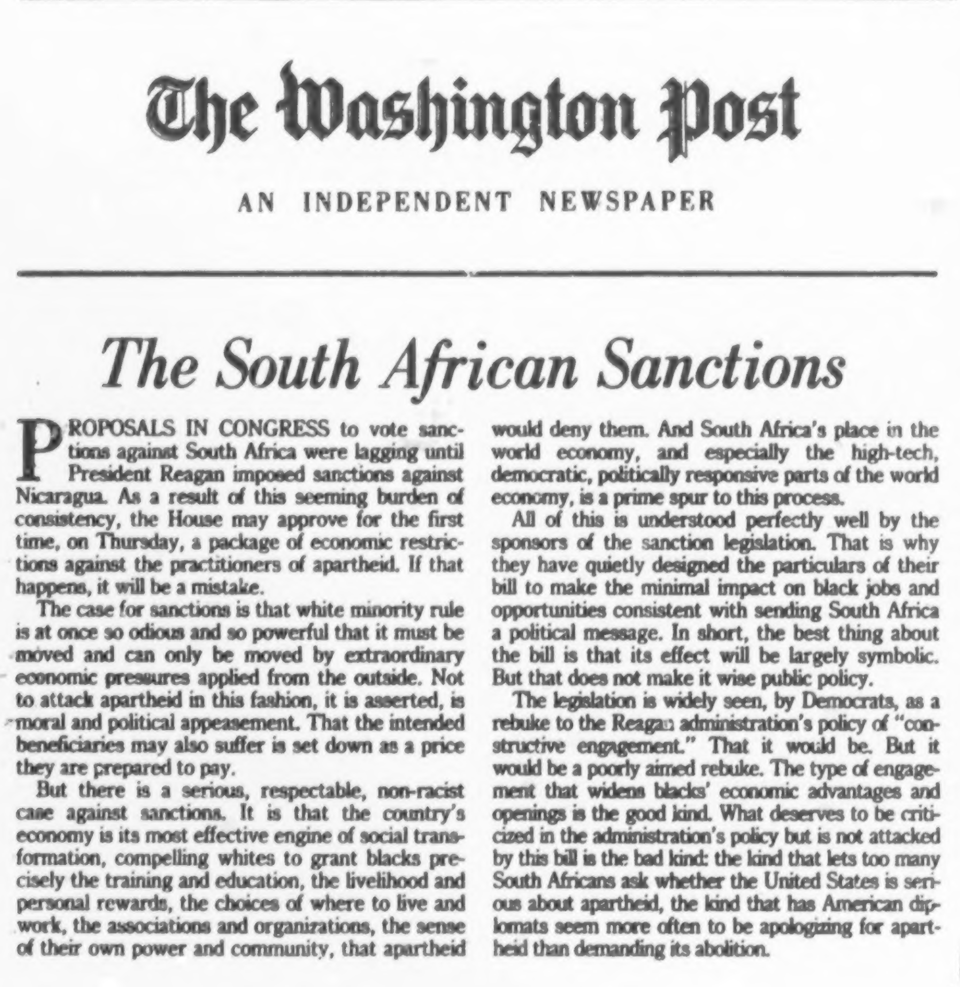
beginning to change. It gives the impression that South Africa is being punished for changing for the better. What South Africa now needs is encouragement - not punishment, if the changes that have started are to continue and accelerate.

One of the main accusations directed at South Africa is that it is governed without the consent of the majority. How is it to be justified that the very people who make this accusation are now acting in exactly the same way? The vast majority of South Africans - all of the Whites, almost all of the Coloureds and Indians and most of the Blacks reject disinvestment or sanctions. A scientific survey conducted by Professor Laurence Schlemmer of the University of Natal shows that 75 per cent of all black South African factory workers are totally opposed to disinvestment. They will feel it most, after all.

That being so, what right have Americans to ignore the wishes of the vast majority of South Africans and increase their hardship and suffering at no cost or suffering to the Americans themselves. It is simply too easy to expect other people to suffer while one sits back in unaffected affluence in the safety of a distant land.

If the pace of change in South Africa is to be helped and quickened, South Africa needs more investment - not less, more job opportunities - not less, more education - not less, and above all, more encouragement - not less. Only by such encouragement and constructive engagement can we achieve what all reasonable Americans and South Africans wish to see: a South Africa in which all the people share equitably in the government, decision-making and the wealth of the land. We all want the same result, but we as South Africans think the methods advocated by the protagonists of punitive measures now, will not help to achieve the desired result.

F.G. Backman
Dr W.R. Hoods
T.L. Gounden
C.R.E. Rencken



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The Washington Post

AN INDEPENDENT NEWSPAPER

The South African Sanctions

PROPOSALS IN CONGRESS to vote sanctions against South Africa were lagging until President Reagan imposed sanctions against Nicaragua. As a result of this seeming burden of consistency, the House may approve for the first time, on Thursday, a package of economic restrictions against the practitioners of apartheid. If that happens, it will be a mistake.

The case for sanctions is that white minority rule is at once so odious and so powerful that it must be moved and can only be moved by extraordinary economic pressures applied from the outside. Not to attack apartheid in this fashion, it is asserted, is moral and political appeasement. That the intended beneficiaries may also suffer is set down as a price they are prepared to pay.

But there is a serious, respectable, non-racist case against sanctions. It is that the country's economy is its most effective engine of social transformation, compelling whites to grant blacks precisely the training and education, the livelihood and personal rewards, the choices of where to live and work, the associations and organizations, the sense of their own power and community, that apartheid would deny them. And South Africa's place in the world economy, and especially the high-tech, democratic, politically responsive parts of the world economy, is a prime spur to this process.

All of this is understood perfectly well by the sponsors of the sanction legislation. That is why they have quietly designed the particulars of their bill to make the minimal impact on black jobs and opportunities consistent with sending South Africa a political message. In short, the best thing about the bill is that its effect will be largely symbolic. But that does not make it wise public policy.

The legislation is widely seen, by Democrats, as a rebuke to the Reagan administration's policy of "constructive engagement." That it would be. But it would be a poorly aimed rebuke. The type of engagement that widens blacks' economic advantages and openings is the good kind. What deserves to be criticized in the administration's policy but is not attacked by this bill is the bad kind: the kind that lets too many South Africans ask whether the United States is serious about apartheid, the kind that has American diplomats seem more often to be apologizing for apartheid than demanding its abolition.

The Heritage Foundation **Institution Analysis**

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September 12, 1984

FOR U.S. FIRMS IN SOUTH AFRICA, THE THREAT OF COERCIVE SULLIVAN PRINCIPLES

INTRODUCTION

"I'm not here to keep American companies in South Africa."

-- The Reverend Leon Sullivan[1]

A voluntary code of corporate conduct for American firms with South African investments has turned into a bureaucratic quagmire and created a controversial backlash with major foreign and domestic policy implications.

The code, known as the Sullivan Principles, was developed in 1977 to mute criticism from those who object to American economic activity in South Africa because of the government's apartheid policy of racial segregation and to channel American corporate resources into activities that are supposed to promote social and economic improvements for South Africa's non-white population. By 1983, some 146 U.S. companies had become Sullivan signatories, spending more than $78 million in pursuit of the Principles' goals. Another five have joined in the past year. Despite this progress, significant problems developed.

Questions arose as to just how "voluntary" the program had become. Participants were saddled with a lengthy questionnaire on South African activities, required to submit to an annual audit, and pay a stiff fee for the privilege. Many did so, investing upward of $100,000 on the in-house paperwork alone,[2] only to receive a questionable failing grade from the auditor, Arthur D. Little, Inc. Others could not justify spending that kind of time and money and did not report. Some, calling it "low-grade blackmail," refused to pay.[3]

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[1] New York Times, November 6, 1983.

[2] Fortune, July 9, 1984.

As a result, 30 of the 146 signatories were dropped from the Sullivan list in 1983. For them, and for the signatory companies that received failing grades, life has become unpleasant. Sullivan ratings are well-publicized and often cited by investment publications including News for Investors, published by the National Council of Churches' Investor Responsibility Research Center. News for Investors routinely prints Sullivan ratings. Companies receiving "failing grades" often find themselves deluged with inquiries concerning South African operations and Sullivan ratings. On occasion, universities, pension funds and other institutions use the ratings as rationale for divestiture. This threatens to depress the market value of these companies' stocks and securities and holds the promise for negative fiduciary impact for the institutions. A rash of state and local divestiture legislation compounds the problem. The media reflexively brand failing companies racist.

The problem for U.S. corporations is not the substance or intent of the Principles. They are laudable, pledging:

> Nonsegregation of the races in all eating, comfort, locker room, and work facilities.
>
> Equal and fair employment practices for all employees.
>
> Equal pay for all employees doing equal or comparable work for the same period of time.
>
> Initiation and development of training programs that will prepare blacks, coloreds and Asians in substantial numbers for supervisory, administrative, clerical and technical jobs.
>
> Increasing the numbers of blacks, coloreds, and Asians in management and supervisory positions.
>
> Improving the equality of employees' lives outside the work environment in such areas as housing, transportation, schooling, recreation, and health facilities.

While the substance of the Principles is not the problem, the compliance system and machinery are. The Principles' author, Leon Sullivan, a black Baptist minister from Philadelphia, has abandoned the voluntary nature of the procedure by publicly endorsing and testifying on behalf of the Solarz-Gray amendments to Title III of the Export Administration Act. Solarz-Gray would transform into binding law major elements of the Sullivan Principles and would ban further investments by U.S. companies in South Africa. Violaters would face fines up to $1 million and stiff jail terms.

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[3] From an interview, July 25, 1984.

Solarz-Gray almost would assure U.S. disinvestment from South Africa. Faced with mounds of government paperwork and a prohibition on future capital improvements, American firms would quickly become non-competitive and eventually retreat from the South African market. A byproduct, of course, would be cessation of American social investment on behalf of South Africa's non-white population. More important, tens of thousands of non-white jobs would vanish. Fearful of the implications of Solarz-Gray, the State Department has begun pressuring those U.S. firms that refuse to sign the Sullivan Principles and pay the high audit fees to do so. The State Department apparently believes that universal voluntary compliance would make Solarz-Gray unnecessary. The potential pool of Sullivan participants is large. An estimated 350 U.S. companies operate in South Africa.

Codification of the Sullivan Principles is gaining popularity in state and local governments where legislators seek to head off complete disinvesment. Connecticut already has such a law. Recently, 24 states and localities were considering 66 separate pieces of disinvestment legislation. Such major cities as Washington and Philadelphia already have passed laws. New York City is considering it. The implication for $200 billion worth of state and municipal pension funds looms large, for restrictions on how portfolio managers can invest the money entrusted to them significantly handicap potential performance of the funds. Those penalized, of course, will be pensioners or taxpayers.

The Sullivan Principles regrettably have been evolving from well-intended voluntary guidelines for corporate behavior in South Africa to a coercive system in which the U.S. government now is being asked to participate. Such coercion, by driving progressive U.S. firms out of South Africa, could harm those whom the Sullivan Principles are supposed to help--South Africa's non-whites.

THE CRUSADER

Leon Sullivan's social activism began during the 1940s in New York City, when he worked with the colorful and controversial Adam Clayton Powell. He later moved to Philadelphia to become pastor of the Zion Baptist Church. From its pulpit he launched a number of initiatives that eventually spread across America and Africa and attracted hundreds of millions of federal, state, local and private sector dollars. Sullivan assembled an impressive matrix of supporters from both major political parties, from Wall Street to Main Street, from Ghana to Georgia.

In 1962, along with several hundred other Philadelphia clergymen, Sullivan launched a consumer boycott that forced the Philadelphia Chamber of Commerce and 300 business owners to pledge to hire black unemployed and adopt what was called a fair employment policy. Two years later Sullivan founded a privately funded job training program called the Opportunities Industrialization Center. Several months later, Dr. Maurice Dawkins, a Sullivan associate, opened an OIC in Los Angeles. Dawkins subsequently left Los Angeles to join Lyndon Johnson's Administration. There he secured $1 million from the Office of Economic Opportunity to open three more OIC facilities. In the following years, a national OIC structure took shape with Sullivan as chairman. The lion's share of the funding came from OEO, the Labor Department, and the Department of Health, Education and Welfare.

Sullivan's political clout subsequently multiplied. Amendments to the Manpower Act of 1970, the Comprehensive Employment and Training Act of 1973, and the Job Training Partnership Act all contained protective language specifically inserted for OIC's benefit. The code word for OIC in this legislation was "community-based organization" or CBO. "Whenever an amendment came up, we moved to make sure we were protected, so you'll find a whole lot of CBO amendments along with the other amendments," Dr. Dawkins told The Heritage Foundation.

This protection paid off. By the late 1970s, OIC operated 160 centers in 40 states, had 5,000 full-time employees and an annual budget of $150 million, 90 percent coming from government. Boasts Dawkins: "Our guys would always get a fair share of whatever was available at any level of government."[4] OIC went global in 1969, launching OIC International. It operates in eight African countries and has interest groups in five others, including Zimbabwe, where a Marxist government recently rejected British-style democracy. Domestically, OIC claims to have trained 700,000 individuals, placing 75 percent in positions with an 85 percent on-the-job retention rate. In 1981, a series of Philadelphia Bulletin articles exposed significant OIC mismanagement. Sullivan admitted problems at a few centers.

The Reagan Administration has been reducing federal funding of OIC. As a result, the organization's operations have been cut back significantly, reducing its centers to 123 and its full-time staff to about 1,000. Nonetheless, Sullivan cannot complain about U.S. taxpayer generosity. Since 1970, his organizations have received over one-half billion dollars in federal, state and local grants.[5]

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[4] From an interview with Dr. Maurice Dawkins, August 1, 1984.

[5] Interview with Elton Jolly, Executive Director of OICs of America, Inc., September 6, 1984.

BIRTH OF THE SULLIVAN PRINCIPLES

Sullivan's OIC activities brought him to the attention of American corporations. In 1971, he was invited to join the board of General Motors. He accepted. He then astounded his fellow directors when he called on GM to pull up stakes in South Africa. Operating profitably there since 1926, GM would do no such thing. After a dialogue with black South Africans, Sullivan drafted his Principles as an alternative to business divestment.

Twelve companies signed the Principles in 1977. The following year, Sullivan hired Arthur D. Little, Inc., the Cambridge, Massachusetts management consultancy, to establish a rating system for signatory performance. Executives from signatories were recruited to form an Industry Support Unit, responsible for participation in policy and administrative matters germane to the Principles. A formal adminstrative arm, the International Council for Equality of Opportunity Principles, Inc., handles day-to-day business and is located not far from Sullivan's Philadelphia church.

Little will publish its Eighth Report on the Signatory Companies to the Sullivan Principles next month. Past reports, and the questionnaire and rating system on which they are based, have become controversial. The 55-page questionnaire asks over 100 questions. Eight pages of accountant's guidelines are also included, as answers detailing finanical participation require independent audit, sometimes from more than one firm. Observed Fortune Magazine this summer: "The red tape is so daunting that William H. Magruder, head of Union Carbide in South Africa and an old hand, suggests that new signatories be assigned experienced 'buddies' in the manner of scuba divers facing the perils of the deep."[6]

As of last year, signatories not willing to pay the annual fee to the Industry Support Unit were dropped. The fee or "contribution," as S.G. Marzullo, manager of international government relations for Mobil and chairman of the Industry Support Unit, prefers to call it, is based on a company's worldwide sales and not on the scope of its South African operations. Says Marzullo: "You must pay and you must report."[7] Several signatories find this a curious form of voluntarism. "When it came time for the Seventh Report, we were informed that the fee would have to be paid before the report was graded. We saw this mandated fee as low-grade blackmail," says Rod Reck, vice president and general counsel for Loctite, the Connecticut-based fastener manufacturer and one of the signatories ejected from the 1983 Sullivan report. "This was being imposed by an outside source, not by the people who share the common ideal,"[8] adds Reck. Loctite's annual fee was assessed by the Industry Support Unit, the official bill collector, at $5,000. Individual fees range from $1,000 to $7,000 annually and are used to pay Little and the overhead for Sullivan's Philadelphia office and staff (International Council for Equality of Opportunity Principles, Inc.). Sullivan dismisses objections to mandatory fees as "jive,"[9] asserting that companies use it as a smokescreen to shield poor performance.

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[6] Fortune, July 9, 1984.

[7] From an interview August 7, 1984.

However, many signatories view the performance ratings as overly subjective and unrepresentative of corporate activity in South Africa. Even the Little executive in charge of the process, Reid Weedon, admits to major problems with the system. He told The Heritage Foundation: "I don't know any way to make [the ratings] foolproof. You're comparing apples and potatoes here."[10] Nevertheless, Weedon stands by the grading system. But Marzullo cautions, "The present questionnaire only partially reflects what companies are doing [in South Africa]. In effect, it's a shotgun approach to 'What do you do to help non-whites in South Africa?,' with each company trying to make as many points as it can to get a good grade. We need a questionnaire that deals with how you address basic root problems."[11] Marzullo wants the grading system changed, for example, to award points for providing qualified teachers, not just new classrooms. Indeed, the Sullivan Principles have encouraged construction of housing, schools and clinics, but have not necessarily paid much attention to what goes inside.

Giant multinationals with great resources at their disposal receive better grades. Smaller companies encounter tougher sledding. "We have a very small operation and the cost did not warrant our involvement," said a spokesman for the Simplicity Pattern Company, one of 30 companies that either were ejected or withdrew as signatories in 1983.[12] According to Weedon, "The majority of companies who withdrew [as signatories] have no ownership in South Africa and no employees in South Africa."[13] Yet this contradicts the Seventh Report, which categorized at least 14 of the dropped companies as having 10 or more employees, a minimum of 5 having 10 or fewer employees and none owning less than 19 percent equity.[14]

Still, not even sheer size can insulate a signatory from swings in the South African economy, recently in recession, which often dictate the level of its social spending there. "There's no way you can judge the success of a long-term program in one or two years," says Marzullo. "A company may fall back during a reporting period and then go back up again. It isn't fair to penalize them over the short-term for some temporary setbacks."[15]

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[8] From an interview July 25, 1984.

[9] New York Times, November 6, 1983.

[10] From an interview July 27, 1984.

[11] From an interview August 7, 1984.

[12] New York Times, November 6, 1983.

[13] From an interview July 27, 1984.

[14] "Seventh Report on the Signatory Companies to the Sullivan Principles," October 25, 1983.

And when Weedon does make a mistake, little time is provided for appeal before the error finds its way into print. Loctite received a failing grade in 1982, in part because it paid some employees $10 below the minimum monthly wage (fixed at 30 percent above the local prevailing minimum wage) set by the Sullivan organization. "The employees concerned were two partially-disabled individuals, virtually unemployable, whom we acquired when we bought our South African subsidiary; but they're paid the acceptable wage level now. Reid Weedon visited our plant there and agreed with our handling of the matter, but there was no modification of the report."[16] After grades are issued, recipients have two and a half weeks to change Weedon's mind; otherwise, nothing can be done until the following year.

Companies that have never been signatories resent the pressure to comply formally with the Sullivan Principles, especially when they have their own anti-discrimination codes. "We do not need, nor do we wish a third party monitoring us," says Alan Mankoff, chief of Dun and Bradstreet in South Africa. "We integrated our operation long before Mr. Sullivan thought of putting it down in writing. There are people who say that the easy way out is to sign, but we think that's hypocrisy."[17]

Firms that have signed the Principles find that the requirements for a passing grade grow. Since 1977, Sullivan has written three "amplifications" to the Principles. "The Principles get tougher and more stringent all the time," he says.[18] "I keep saying to the companies, we must do more, more, more...we must move faster, faster, faster...."[19]

SIGNATORIES' SOCIAL INVESTMENT IN SOUTH AFRICA

Since 1977, Sullivan signatories have poured $78 million into projects designed for the benefit of South Africa's non-white population. Marzullo thinks that this will top $100 million by the end of 1984. Two years ago, reports the New York Times, American companies spent "more than five percent of operating earnings on housing developments, training and education programs, and community developments for their workers [in South Africa]--possibly more than they spend anywhere else in the world, including the United States."[20] According to the Seventh Sullivan

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[15] From an interview August 7, 1984.
[16] From an interview July 25, 1984.
[17] New York Times, November 6, 1983.
[18] Ibid.
[19] From a speech to the Sullivan signatories, November 9, 1983, New York.
[20] New York Times, November 6, 1983.

Report, significant progress in implementing the Principles has been made: all but one of the reporting signatories is desegregated; all have common medical, pension and insurance plans; blacks still receive higher wage increases than whites; and proportionate participation by non-whites in sales training programs has increased.

The number of South Africans employed by Sullivan signatories is down to approximately 66,000 from a high of 82,000, partially due to the recession and the withdrawal of a few U.S. firms. Non-Sullivan American firms employ about 33,000 South Africans.

Despite the flat economy, in 1983 reporting Sullivan signatories spent $22.4 million on education and job training, entrepreneurial assistance, health and housing for non-whites. Over 35,000 blacks participated in scholarship and tuition refund programs, while 50,000 took part in job advancement training. More than 200 schools were "adopted" under the "adopt-a-school" program. The equivalent of 229 full-time employees contributed 57,072 employee days for instruction and consultation. The average employer spent more than $225,000.[21] The irony is that this social investment may soon halt--in large part because of Leon Sullivan.

ANOTHER PUBLIC SECTOR SOLUTION SOUGHT

As with his Opportunity Industrialization Center job training program, Sullivan has turned to government for help when the marketplace did not satisfy him. The Principles were barely three years old when Sullivan endorsed the Solarz-Gray amendments to Title III of the Export Administration Act. Testifying before the House Subcommittee on Africa, Sullivan said, "The Government must require the adherence to the principles and there must be measurement and monitoring effectiveness....[A]t a minimum, I would like to see you pass legislation making the principles mandatory for American companies, including sanctions and penalties for those who do not comply....Companies have no social conscience; they have balance sheets; they want to see profits.

"I strongly support Congressman Solarz' bill which proposes: One, requiring that all U.S. companies sign the equal opportunity principles; two, onsite monitoring of all American companies in South Africa and three, tax penalties and sanctions imposed on companies that refuse to sign and do not comply with the standards set.

"I strongly support Congressman William Gray's bill which calls for a halt to all new investments except for essential retooling; and I urge, in addition, that there be no further expansion of operations already in South Africa until changes are made in the prevailing conditions."[22]

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[21] "Meeting the Mandate for Change," Sullivan Principles Industry Support Unit, 1984.

Earlier, Sullivan had issued a joint statement with Rev. William Howard, president of the National Council of Churches, pledging acceleration of a campaign aimed at ending U.S. bank loans to South Africa.[23]

Signatories have greeted Solarz-Gray with horror. "What Solarz has proposed is a bureaucratic monstrosity," says William Broderick, director of intergovernmental relations at Ford.[24] General Motors, whose six-year old education and training program for non-whites predates the Principles, voiced early opposition to Solarz-Gray. "...We firmly believe that mandating these principles would act as a negative--not positive--force. The Sullivan Principles are all the more impressive because of their voluntary nature....We also believe that the South African government would consider mandated principles an extraterritorial application of U.S. law."

A prohibition on new South African investment, according to GM, "would make it impossible for us to remain competitive. If we can't be competitive, we would not be able to provide new jobs, as we did this year and last" as well as providing other social and economic assistance to non-whites in South Africa.[25] Complains Mobil's Marzullo, "The danger of that legislation is that it is punitive. There's a lot involved here. In the long run they're hurting the people they want to help."[26] Atlanta Mayor Andrew Young, in fact, several years ago warned that South African blacks would suffer most from reduced economic activity of U.S. firms.[27]

Analyzing labor provisions of the Solarz bill, Senator Orrin Hatch, the Utah Republican, concludes, "Five of the codified Sullivan Principles are inconsistent with Federal labor law," as they dramatically exceed domestic standards for U.S. companies.[28]

Title III to the Export Administration Act, of which Solarz-Gray would be part, currently awaits action from a House-Senate conference committee. The Senate version of EAA contains no South Africa language. To keep such language out of the bill's final version, the State Department has begun twisting arms to recruit more signatories for the voluntary Sullivan Principles. Said Secretary of State George Shultz to a group of corporate executives this March: "Ladies and gentlemen, we must face the fact that we are dealing with perception as well as reality.... Many Americans believe some form of governmental action is required to address the issue of apartheid and to punish South Africa. They seek to suspend a normal economic relationship, cut off investments and credits, embargo South African gold coins, block non-sensitive nuclear trade, and force American companies to accept modified Sullivan principles....I strongly urge those companies that have not adopted the principles, as for example those basically defined by the Sullivan code, to do so without delay."[29] Yet since the 1983 Sullivan Report, only five new companies have become signatories.

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[22] Hearings before the House Subcommittee on Africa, September 24, 1981.
[23] From a joint statement, March 19, 1981.
[24] New York Times, November 6, 1983.
[25] From a 1981 statement.
[26] From an interview August 7, 1984.
[27] Chicago Tribune, February 6, 1978.
[28] Congressional Record, February 29, 1984, p. S1932.

FUTURE OF THE SULLIVAN PRINCIPLES

Complaining of the probable consequences of Solarz-Gray, Sullivan Industry Support Unit Chairman Marzullo says, "If you start imposing bureaucratic control over this thing, you're going to ruin it."[30] But the damage may already have been done. Annual paperwork for reporting signatories has mushroomed. Much of the voluntary spirit of the endeavor has been lost. The prime mover, Leon Sullivan, has not only disparaged voluntarism, but the morality of the free enterprise system. Warned Secretary Shultz, "No outside power can or should try to impose its vision on South Africa."[31] While the South African government remains officially neutral with regard to the Principles, it has done nothing to stop their implementation by American businesses or their subsidiaries.

Meanwhile, signatories and non-signatories alike await promised reforms slated for the ninth questionnaire in 1985, among them the intention to make the procedure less cumbersome and bureaucratic, more representative and fair. Above all, the Principles again should be completely voluntary--free of the implicit coercion of recent years. Much is at stake. Says Gatsha Buthelezi, chief minister of the black national state of Kwa Zulu: "Some...in America have got the whole issue exactly upside down. They seem to think it is immoral for American companies to invest here but irresistably profitable. The truth is the opposite. It is morally imperative that American firms remain active here."[32]

Prepared for The Heritage Foundation by
Mark Huber*

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[29] From a speech at Blair House, March 29, 1984.
[30] From an interview August 7, 1984.
[31] From a speech at Blair House, March 29, 1984.
[32] Congressional Record, October 27, 1983, p. H8753.

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AN INVESTMENT STRATEGY TO UNDERMINE APARTHEID IN SOUTH AFRICA

INTRODUCTION

Few Americans, if any, defend South Africa's brutalizing racial separation and discrimination policies that are called apartheid. Being for or against apartheid never has been an issue. The issue is, rather, finding the best ways by which the U.S. can foster apartheid's disappearance.

Two approaches are advocated for achieving this, as was clear during last week's House and Senate hearings on South Africa. One approach is called "disinvestment." It would put pressure on American companies with investments in South Africa to pull out of that country. The objective of this strategy is to so threaten the South African economy (already gripped by a severe recession) that the Afrikaner-dominated white government would recognize that apartheid is too costly to sustain and move swiftly to grant full political rights to all South Africans.

The second approach calls for the opposite kind of strategy, described by the Reagan Administration as "constructive engagement." This involves extensive economic and diplomatic contact with South Africa to dissipate the siege mentality of Pretoria and to foster gradual change.

Momentum is growing in Congress for legislation based on the disinvestment approach. Frustrated by what they interpret to be the inadequate success of the Administration's policy of constructive engagement, many legislators feel that persuasion never will achieve significant reform. The only language Pretoria will understand, they argue, is the threat of U.S. investment boycott.

Disinvestment, however, would be a serious mistake, for it would penalize South Africa's blacks and actually make the dissolution of apartheid more difficult. Disinvestment is based on a

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Note: Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

misunderstanding of Afrikanerdom, a misreading of the process of change in South Africa, and a historically unjustified confidence in the effectiveness of boycotts. Disinvestment would have at most a marginal impact on South Africa's economy. It probably would prompt Pretoria to become more stubborn. And even if disinvestment did begin to bite, it simply would slow the workplace reforms pioneered by the progressive American companies in South Africa and weaken black unions, while strengthening the position of reactionary white workers. It would undercut the reformist English-speaking business community and the media it supports. Most important, disinvestment could blunt the economic forces that are slowly, but inexorably, undermining apartheid's foundations.

It is the unstated premise of disinvestment that, in the political context of South Africa, this policy will achieve reform only if the country is polarized further, leading to violent and bloody revolution--out of which, perhaps, a peaceful and stable democratic state will emerge. The trouble is, post-colonial Africa offers no precedent for this.

Nor is constructive engagement, albeit much sounder than disinvestment, a sufficent policy. Rather than relying only on the diplomacy of such an effort, the Administration should fashion a more activist strategy recognizing that it is economic growth, coupled with the color-blind employment practices of U.S. companies, that poses the greatest threat to apartheid. Over 300 U.S. companies currently have subsidiaries in South Africa, including IBM, Ford, General Motors, Mobil, and Xerox. The $2 billion in American assets in the country represents 20 percent of total foreign direct investment. American investment dominates such areas as oil and computers.

Constructive engagement should be supplemented by a strategy of "investment leverage." Instead of disinvestment, increased American participation in the South African economy should be encouraged. The U.S. government, meanwhile, should provide special assistance through American companies to upgrade the educational and management skills of black South Africans and help them form businesses of their own. Assistance also should be given to American trade unionists to train black union organizers. Finally, technical assistance and encouragement should be given to speed the recent decision by the South African government to return to the private sector key segments of the nationalized economy, thus taking control from Afrikaner bureaucrats.

WHY DISINVESTMENT WILL NOT WORK

The disinvestment strategy forms the heart of recent congressional initiatives to pressure the government of South Africa. These efforts misread the economics and the politics of that country.

The Economics of Disinvestment

The theory of disinvestment is that, by threatening to block American investment in South Africa, the local economy would face such a crisis that Pretoria would be forced to make major political concessions to blacks--particularly as South Africa already suffers from a painful recession. While this sounds plausible in theory, there is little reason to believe that disinvestment would expose a South African economic Achilles heel.

A recent major analysis of the South African economy by The Economist (of London) concludes that the economic effect of U.S. disinvestment would be small and could conceivably boost the country's economy.[1] The journal points out that the South African recession already has hit investment hard for purely commercial reasons and that new American capital inflows have fallen by 10 percent in just the last year. Total investment from outside South Africa has "slowed to a trickle," falling below $100 million a year. Consequently, "The disinvestment lobby is working on a tiny margin of the South African economy." Moreover, the disinvestment rationale ignores totally the possibility of South African retaliation. Three times greater than foreign investment going into South Africa are dividends sent abroad by firms in South Africa. Disinvestment thus could be countered by a dividend export freeze by Pretoria, which would improve South Africa's capital balance of payments and free more domestic funds for investment.

Concludes The Economist:

> Disinvestment would be once-for-all Marshall aid. It is hard to comprehend the widely held view in the anti-apartheid lobby that this would traumatize the South African economy: in the short term, it would probably boost it.[2]

The British journal also points out that, if U.S. companies were forced to withdraw from South Africa, the action would threaten the employment of 120,000 blacks, many of whom have learned new skills and earned promotions in progressive, desegregated American companies. If these firms closed, many of their black employees would be liable for deportation to the tribal homelands. More likely, the South African government would nationalize the companies or allow local firms to take them over. Notes The Economist, "It is hard to see how replacing an American personnel director with an Afrikaner one is an advance for anti-apartheid."[3]

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[1] "The All-American Leverage Game," The Economist, March 30, 1985, pp. 31-32.

[2] Ibid., p. 32.

[3] Ibid.

The principal effect of disinvestment would be to erode the economic leverage of blacks. Black South Africans comprise about three-quarters of the country's workforce and half its skilled labor. As the economy has grown, shortages of white labor have allowed blacks to force themselves into occupations once reserved for whites. Black trade unionism also has grown rapidly with the expanding economy. Membership has reached almost half a million. After Pretoria recognized the inevitable and legalized black unions in 1979, black wages doubled over the next three years, and black trade unionists began to flex their political muscles.

The Politics of Disinvestment

Disinvestment may be favored by black organizations and liberals in the U.S., but polls reveal that it is opposed by urban blacks in South Africa by about three to one. It should be no mystery why South African blacks strongly support the presence of foreign firms that have done so much to improve the economic and social status of their nonwhite workers.

South Africa's black National African Chamber of Commerce and Industry, for instance, sent a memorandum to Senator Edward Kennedy during his recent visit to South Africa, attacking disinvestment as inhibiting economic growth, "which is a powerful catalyst in the process of peaceful social and political reform in the country." The same view was expressed by Chief Gatsha Buthelezi of the Zulu tribe, a fierce opponent of apartheid. He called disinvestment "tactical madness" during a February visit to the United States.

Those South African blacks who oppose disinvestment are denounced by South Africa's militant black leaders and their American allies for two reasons. First, to be successful politically they must seek to persuade Congress and the American people that the choice is simple and stark--either one supports "the blacks" in South Africa, who are supposedly unanimous in their support of disinvestment, or one supports white racism. To recognize the deep disagreement among South African blacks regarding strategy would make it easier for Americans to oppose disinvestment. Second, some advocates of disinvestment seem to favor revolutionary change in South Africa. For them, there is sense to the old revolutionary dictum: the worse, the better. As such, the fact that disinvestment would hit blacks harder than whites is a virtue, since it would drive blacks into economic despair and militancy. Thus well-meaning supporters of disinvestment must come to see that this policy would make conditions worse for blacks, not better, and that the process of change it envisions is based on confrontation and violence, not peaceful reform.

The efforts of black and white moderates in South Africa would be weakened by disinvestment. In particular, it would reduce the corrosive effects on apartheid of black advancement within U.S. companies. And it likely would reduce the financial support given by the English-speaking business community to the opposition media. Recently the Rand Daily Mail, one of the strongest critics of apartheid, was forced to close for economic reasons. Disinvestment threatens other English-speaking opposition newspapers by forcing a cutback in their business support. The net effect of disinvestment, therefore, would be not to force Pretoria to the negotiating table, but to undermine those in South Africa who support peaceful change--leaving violence as the only available option.

The politics of Afrikanerdom reinforces the argument that disinvestment will fail. The history of South Africa has been characterized by Afrikaners seeking to retain their ethnic and social identity against outside threats--from the English, from the nonwhites, and even from erosion by industrialization. Apartheid uses the crude approach of partition. Within the white business community, extensive regulation and nationalization has been used by the bureaucracy--dominated by Afrikaners--to try to hold back what they see as the corrupting power and influence of the English-dominated business class.

But the Afrikaner community is not monolithic. There are those known as "verligtes" (who favor sharing power with the blacks and see reform as both inevitable and desirable) and the "verkramptes" (who support the traditional Afrikaner commitment to apartheid with no concessions). And though the reforms of South Africa's President Pieter W. Botha seem minimal to many American observers, they indicate strong verligte influence and have led to a wrenching split in Afrikaner politics.

To be sure, the Botha government is extremely cautious and as stubborn as any Afrikaner in the face of outsider pressure. Yet Pretoria is slowly adapting the law to accommodate economic and social pressures within the country. It is now widely accepted that the blacks are not temporary workers but permanent urban residents. The new constitution, bitterly denounced by verkramptes, accepts that some nonwhites must have a say in national decisions--a slide toward democracy that may be very hard to reverse. Most recently, Pretoria made the dramatic announcement--to the horror of the verkramptes--that it will repeal the laws forbidding interracial marriage and sexual relations. "Like it or not," said an editorial in the Cape Town Argus, "their removal must of necessity affect the entire edifice [of apartheid] in time to come." Days later, Botha announced not only that blacks would be permitted to buy houses in the black townships of "white" South Africa, but that they would not necessarily lose their South African citizenship if their nominal homeland were granted independence--implying an acceptance that blacks are a permanent part of South African society.

The political irony of disinvestment is that, by forcing a political confrontation within the Afrikaner community, it could slow down, and even reverse, the growing realization in white South Africa that the economic and social changes underway should be codified by law. The Botha government is said by many South Africans to be reforming by "stealth." Each legislative retreat is shrouded in vague and evasive statements, so that the Afrikaner community is not excessively alarmed. To the outside observer, of course, this seems like a lack of commitment, but it may be the only strategy that will avoid a verkrampte backlash. For Pretoria's dilemma is that, to satisfy the demands of the disinvestment lobby in Washington, the Botha government would have to make its actions so clear that Afrikaner reaction would eliminate any chance of effecting the intended reforms.

THE MEASURES BEFORE CONGRESS

To date, 21 bills concerning South Africa have been introduced in Congress. The majority of pending bills contain a common theme: legislative sanctions to restrict or halt private U.S. economic activity in South Africa. Examples:

Bill introduced April 24 by Senator Richard Lugar (R-IN).

This bill incorporates an earlier bill introduced by Senator Charles Mathias (R-MD) and approved by the Foreign Relations Committee. It has the support of the Administration.

The measure would require the President to report by March 1987 on whether South Africa has made "significant progress" towards ending apartheid, including: steps to end the pass laws restricting the movement of blacks, increasing labor union rights, ending the migrant labor system, and improving housing for blacks. If the President determines that significant progress has not been made, he would have to recommend to Congress which of four sanctions should be applied against South Africa: bans on new commercial investment, bank loans, the importation of Krugerrand gold coins, or the sale of computers to the Pretoria government.

In addition, the bill would create a $15 million scholarship fund for blacks, require all U.S. companies operating in South Africa to abide by the Sullivan Principles. The Sullivan Principles are a voluntary code of business conduct that commits signatories to desegregate the workplace, remove racial distinctions in pay scales, and step up training and promotion for blacks. Companies abiding by the code employ approximately 70 percent of all workers in American firms located in South Africa. The bill also would provide assistance through American agencies to black-owned businesses in the country, and increase to $1.5 million the Kassebaum Human Rights Fund for victims of apartheid.

S. 147, introduced by Senator William Proxmire (D-WI) and H.R. 632, introduced by Representative Buddy Roemer (D-LA).

This bill would prohibit new U.S. investment in South Africa, require compliance with specific employment practices by U.S. firms in South Africa, block U.S. bank loans, outlaw Krugerrand imports, reimpose Carter Administration trade restrictions, and prohibit exports to South Africa of U.S. nuclear-related technology.

H.R. 1460, introduced by Representative William Gray (D-PA) and S. 635, introduced by Senator Edward Kennedy (D-MA).

This bill would prohibit U.S. bank loans to the Pretoria government and to U.S. firms operating in South Africa, ban new U.S. investment in South Africa, block Krugerrand imports, and block computer sales to the South African government.

Waivers on these restrictions could be obtained for twelve months, if the President and Congress determined that adequate progress had been made in one or more of the following areas: housing for black workers, easing of employment restrictions on blacks, eliminating the homelands and the policy of denying South African citizenship to blacks, ending residence restrictions, negotiating political participation for all races, and the freeing of political prisoners.

H.R. 1595, introduced by Representative Robert Walker (R-PA).

This measure applies to all countries, not just South Africa. Its far-reaching provisions would prohibit the import of goods produced by slave labor, direct the U.S. to oppose International Monetary Fund loans to countries allowing the trafficking of illegal drugs, deny U.S. most-favored-nation status to countries that prevent a free press, direct the U.S. to demand Soviet compliance with the Helsinki Accords, require the U.S. to seek a full accounting of international prisoners of conscience, prohibit U.S. economic aid to states that vote against the U.S. in the U.N. more than 85 percent of the time, stipulate that U.S. foreign assistance promote private sector initiatives, while blocking U.S. economic and military assistance to any state that denies free press access or promotes international drug trafficking or terrorism.

In the specific case of South Africa, the Walker bill would prohibit federal contracts or economic aid to companies that did not implement the Sullivan Principles by January 1987, unless the President certifies that South Africa has made significant steps to end apartheid. The Walker bill would repeal the Clark Amendment, which prohibits U.S. aid to national liberation forces in Angola. The measure also would express the sense of Congress that a Namibian settlement must include the withdrawal of all foreign forces from Angola, that the President should recognize UNITA as the legitimate government of Angola, and that free elections in Namibia need not be predicated upon the mandatory participation of any specific political organization.

ACCELERATING REFORM IN SOUTH AFRICA

The Process of Change

Apartheid is already being eroded by economic growth, and this will continue. Foreign investment and general economic expansion do not prop up apartheid. The modern version of apartheid, created in 1948, has not been able to stem the flow of blacks into white urban areas, an influx that accompanied industrialization. This process of industrialization and black urbanization has doomed the Afrikaner vision of separate development, because it has made the white community dependent upon nonwhites and forced whites to accept that blacks are a permanent and integral part of South African society.

South African industry, boosted by foreign investment and the presence of overseas firms, has been instrumental in translating pressures stemming from economic growth into political reforms that have hammered nail after nail into apartheid's coffin. After the urban riots of 1976, for instance, business groups formed and funded the Urban Foundation, which has acted as a vehicle for physical improvement in the black townships and as a catalyst for political reform. The Foundation played a key role in pressing the government to grant 99-year leasehold rights in black townships--an explicit acceptance of permanent black urbanization. The Foundation also can claim credit for the government's recent announcement that it will allow blacks to own freehold property in the townships.

Similarly, under pressure from "investor responsibility" groups in the U.S., many American firms in South Africa have helped to accelerate reform by adopting the Sullivan Principles. Many American firms also have fostered the creation of small black enterprises.

Perhaps most important, the growth of black trade unionism, aided by U.S. companies, has altered decisively the complexion of labor power. Rapidly expanding black unions have improved markedly the economic status of blacks and formed a critically important new power base. They also act as an increasingly effective counterforce to the white trade unions, which have been among apartheid's strongest supporters since they see black labor as a challenge to their privileged economic position. Economic growth and unionization thus have forced significant changes in the labor laws that restricted certain jobs to whites.

It is these forces arising from economic growth--not pressure from outside--that sound a death knell for apartheid, says South Africa's leading industrialist and white liberal opponent of apartheid, Harry Oppenheimer:

> The South African government is not going to surrender to such pressure [of disinvestment] and the only effect is to compromise the successes of the past....It is just

> because the South African economy has moved forward rapidly that the original apartheid policy has had to be scrapped and that some changes for the better have come about. The fact is that the continued domination of the blacks by the whites could only continue if the economy were kept small enough for all, or anyhow most, skilled jobs to be reserved for whites as they used to be in the past.[4]

Washington Post columnist William Raspberry apparently draws similar conclusions. People of widely differing vantage points, writes Raspberry, who is black, seem to agree that "no matter what happens to the white power structure of South Africa, that country's blacks will not really be free until they are able to control their economic destiny; that economic development might even accelerate their potential enfranchisement; and that hurting the master doesn't necessarily help the slave."[5]

Adding "Investment Leverage" to Constructive Engagement

The Reagan policy of constructive engagement recognizes that encircling South Africa with an economic iron curtain would be difficult and counterproductive. The Reagan Administration correctly sees American investment as a critical element in the campaign for political change in South Africa. Yet constructive engagement is essentially diplomatic in nature, and thus its successes will be confined to reforms that can be induced by gentle persuasion or mild threats.

More is needed. The Administration and Congress should reject the call for disinvestment and instead attack apartheid's soft underbelly by encouraging even more U.S. investment in South Africa, thereby speeding up the corrosive effect of economic growth on the foundations of apartheid.

Such a policy of "investment leverage" requires a number of legislative and administrative actions. Among them:

1) Encourage American firms to abide by a modified version of Sullivan Principles.

Drafted seven years ago by the Reverend Leon Sullivan, a black minister and a director of General Motors, the Sullivan Principles commit signatories to desegregating the workplace and to offering equal pay. Critics argue, however, that the code is ill-defined. Many firms complain bitterly that the system employed to rate firm compliance is unduly subjective, meaning progressive firms sometimes are accused unfairly of noncompliance.[6] Others say recent revisions in the code pushed by Reverend Sullivan, which would require companies to take political actions to end apartheid laws, could force businesses into a damaging head-to-head confrontation with Pretoria, reducing their ability to chip away at the laws.

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[4] "Apartheid Under Pressure," speech to the Foreign Policy Association, October 1984.

[5] "Three on South Africa," Washington Post, April 15, 1985.

Whatever the problems, the Sullivan Principles form a useful set of "rules of engagement" for a policy designed to weaken apartheid by foreign investment. But it has been the economic forces of South Africa's labor market and moral pressure from American shareholders that have made U.S. firms in South Africa a major force against apartheid.

2) Encourage nonwhite trade unions.

U.S. assistance, perhaps as grants from the National Endowment for Democracy, should be provided to U.S. companies and to American trade unions to train black South African union officials. Funds similarly should be made available for business-operated training programs to improve the work skills of South African blacks. Strong black unions and upgraded worker skill-levels, within a growing economy, will speed the economic erosion of apartheid.

3) Foster the creation of black businesses.

A number of U.S. companies, including IBM, have launched programs to train small business owners. A strong and sophisticated black business class will help the gradual shift of economic power from the white to the nonwhite community. The U.S. should provide matching grants to companies willing to undertake such business training programs.

4) Support privatization of state-controlled industries.

In his March 17 budget statement, South African Finance Minister Barend du Plessis committed his government to a widespread transfer of government-owned assets to the private sector. The implications of this could be considerable. The South African economy is a version of state-managed capitalism, rather than genuinely free enterprise. The government has extensive business holdings, including all major utilities, the principal airline, the telephone system, trucking firms, many hospitals, and the coal-oil conversion industry.

The privatization commitment arises from the financially strapped government's need to raise revenue without massive tax increases. Its result will be that key segments of the economy, now controlled by Afrikaner bureaucrats, will be put in the hands of private business--further eroding the government's power base. If privatization is extended to service areas, such as health, education, and transportation, it could also help reduce racially based inequities in allocation, since competitive pressure would encourage privatized firms to make service decisions on the basis of commercial considerations, rather than according to the tenets of racial separation. It is difficult for the U.S. to speed the privatization process directly. But in concert with the British government, which is undertaking a widespread program of privatization, Washington could help coordinate technical assistance both to Pretoria and to potential buyers of assets in South Africa.

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[6] Mark Huber, "For U.S. Firms in South Africa, The Threat of Coercive Sullivan Principles," Heritage Foundation Institution Analysis, No. 30, September 12, 1984.

5) Encourage increased U.S. investment.

Through its public statements, the Reagan Administration should make the case that U.S. firms in South Africa are an anti-apartheid force. The White House should create an opinion climate in the U.S. that applauds rather than condemns U.S. firms that set up plants, offices, and other workplaces in South Africa.

CONCLUSION

The disinvestment campaign rests on a faulty analysis of the economics and politics of South Africa. The economic impact of disinvestment would be marginal at best. Its main effects would be to strengthen Afrikaner resolve, weaken the growing economic power of blacks and anti-apartheid segments of the business community, and reduce the pace of change stimulated by economic growth. Disinvestment, therefore, would strengthen, not weaken, apartheid.

By contrast, Reagan's constructive engagement is a sensible diplomatic strategy aimed at eroding apartheid. This now should be bolstered through a strategy of investment leverage. By recognizing that strong economic growth, not disinvestment, will undermine apartheid and strengthen non-Afrikaner economic power while weakening Afrikaner political power, the U.S. would encourage gradual, but peaceful and irreversible, change.

Stuart M. Butler, Ph.D.
Director, Domestic Policy Studies*

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*Heritage Foundation Research Associate Richard D. Fisher contributed valuable assistance in preparing this study.

CONTROL DATA

8100 34th Avenue South
Mailing Address/Box O
Minneapolis, Minnesota 55440

May 30, 1985

The Honorable John Heinz
Russell Senate Office Building
SR-277
Washington, D.C. 20510

Dear Senator Heinz:

We at Control Data commend your efforts to propose legislation to help bring about constructive social change in South Africa.

Because of our own commitment to contribute to change in South Africa, we strongly support the provisions of S.995 that would provide increased U.S. assistance to finance scholarships for black South Africans. Section 3 recognizes, as Control Data has, the fundamental necessity of improving education and training for South African blacks, and that the U.S. government has an opportunity to play a significant role in expanding educational opportunities for black South Africans.

We also support the inclusion of the Sullivan Principles as a mandate for U.S. businesses operating in South Africa. We fully agree with Professor Roy Schotland of the Georgetown University Law School, who testified recently that Congress should make a distinction between those U.S. companies which have exemplary records in South Africa and those which do not.

In regard to the proposed ban on exports of computers to the South African government and the state owned national corporations, I believe it would be a disservice to the United States as well as to black people in South Africa because such a restriction would prevent the use of computers for commercial training and educational purposes. This provision of S.635 would force disinvestment of U.S. computer companies from South Africa and disregards the positive role of the state-owned national corporations in the education, training and employment of black South Africans. Notwithstanding Control Data's exemplary record as one of the first Sullivan Signatory companies and our policy of not selling computers to the South African military, police or apartheid enforcing agencies, Control Data would be forced to terminate all operations in South Africa if this provision became law.

In the interests of not foreclosing the opportunity of U.S. computer companies to continue as a positive force for change in South Africa and to supply critically needed education technology, I urge you to delete the proposed ban on the export of U.S. computers. If Congress concludes that the practices of some companies or the existing federal regulations governing the sale of computers are not adequate to prevent their use in the administration of apartheid, I would urge that the ban be targeted at computer exports to the South African military, police or apartheid enforcing agencies.

In the interest of contributing to constructive change in South Africa, I would like to offer an alternative approach which is described in the attached paper.

Sincerely,

William C. Norris

William C. Norris

1144W

BY WILLIAM C. NORRIS
Chairman and Chief Executive Officer
Control Data Corporation

As the Regents of the University of Calfornia review the proposal for divestment of companies doing business in South Africa, they have an opportunity to consider an alternative course of action that would demonstrate leadership and contribute to constructive social change in South Africa.

While there can be no question about the need to stop the oppression of South African black people by ending the morally repugnant system of apartheid, I do not believe that the politically convenient call for universal divestment is the best way of accomplishing that goal. Divestment might calm outspoken critics of discrimination in the U.S. and elsewhere, but there is little evidence that it would contribute to constructive change in South Africa.

What is needed to speed the process of fundamental change is not just public outrage and emotional appeals for actions that may or may not take into account the complex realities of that troubled country. Indeed, total divestment may kill the best hope the present generation of South African blacks has for economic opportunity by removing the powerful leverage for change that U.S. business presence now exerts on South Africa's economy.

American companies like Control Data are among the real catalysts in the struggle for peaceful change in South Africa. To declare these companies as unworthy of University investments would be a step backward in the effort to build more a constructive relationship between the University and the business community. A much more effective approach is a strategy of selective investment: that is investing in those U.S. companies making the greatest progress towards and commitment to helping blacks attain full political and economic opportunity.

A selective investment strategy is of critical importance because, even if apartheid were to end tomorrow, the majority of blacks in South Africa have little or no education amd training and would continue to be denied full access to economic opportunities. As the Reverend Leon Sullivan, the originator of the Sullivan Principles, said recently, "Without major emphasis on education for the black population, political apartheid will one day become economic apartheid."

Instead of merely adding its voice to those who are condemning apartheid, the University now has an opportunity to play a national leadership role in promoting constructive change in South Africa. Although selective investment would be harder to accomplish than universal divestment, it is attainable. At the same time, this selective investment strategy could be coupled with faculty and student exchange programs with leading South African black and multi-racial educational institutions. The end result would be that the University not only would be teaching and learning but would be helping to dismantle apartheid.

Clearly, the implementation of a selective investment strategy is crucial because if leadership isn't shown from concerned U.S. businesses and institutions, it isn't likely to come from any of the other nations that have a business presence in South Africa. Like most European companies, Japanese companies aren't showing much concern for the plight of black South Africans. Whenever a U.S. company is unable, for any reason, to export equipment to South Africa, Japanese companies snap up the business. Today when South African customers visit the U.S., their next stop is usually Tokyo. Because of pressures for divestment and ever-changing U.S. export controls, South African customers are afraid to rely entirely on a U.S. company and are seeking alternatives. Our foreign competitors are eager to fuel such concerns.

Even though Control Data's South African subsidiary represents less than 1% annually of Control Data's worldwide revenues, Control Data is committed to being at the forefront of those American corporations helping to improve education and training for blacks in South Africa. At the same time, we are working to accelerate the end of the apartheid system. We were among the first signatories of the Sullivan Principles and assisted Reverend Sullivan in gaining wider support for those principles as the most effective way of bringing economic opportunity and social justice to South Africa.

To that end, I presented, at Reverend Sullivan's request, a concept for a massive education and job creation program for South African black people to a group of chief executives representing European, U.S., and South African corporations at a meeting in England earlier this year. The planning and overall direction of such an effort would be provided by an international consortium comprised of corporations doing business in South Africa and other organizations, such as churches and foundations concerned about apartheid.

While it is too early to say whether the concept will be implemented, there is no question that it can be. However, it is unlikely that British companies will be involved because they didn't exhibit any desire to participate. The main point is that it is based on proven methodology and it provides a vehicle for those who really want to help black people in South Africa. It is a constructive alternative to advocating measures that will only force U.S. companies to leave South Africa and thereby deny black people help from one of their important allies.

Reverend Sullivan's own testimony on this point is even more compelling. As a result of companies committed to the Sullivan Principles, he recently wrote, "U.S. plants (in South Africa) are desegregated, equal pay for equal work is beginning to be paid to black workers, blacks are being elevated to administrative and supervisory jobs, blacks are supervising whites, blacks are being trained with new technical skills, independent free black trade unions are being recognized, schools are being built, housing developments are being constructed, health centers and programs are being initiated, and young blacks by the thousands are being assisted with better education."

I am firmly convinced the presence of Control Data and most other U.S. companies in South Africa has been and continues to be a significant force for improving life for black South Africans, which more than anything, will help bring about constructive change and ultimately the end of apartheid. Many of the products and services we have developed -- particularly computer-based education and training -- are targeted specifically at improving the access of black South Africans to better education and economic opportunity.

The complex reality of South Africa is difficult to understand -- and easy to underestimate -- when viewed from the vantage point of the U.S. Nor can the most effective way of solving that country's pressing problems, such as closing the education gap, be fully appreciated from afar. To advance, encourage and support the efforts of those who are working for constructive change in South Africa, the University should take the bold and visionary step of adopting a policy of selective investment in companies doing business in that troubled country.

THE AMERICAN ROLE

"THE AMERICAN NATIONAL INTEREST IN A STABLE SOUTH AFRICA"

Herman Nickel is a former member of the board of editors of Fortune Magazine, was Time's Africa correspondent in the early sixties, and a Time bureau chief for 20 years. This background brings to his ambassadorial post an enlightened experience rarely found in diplomatic circles.

IN November, 1976, I was one of a group of journalists who sat on the steps leading up to the American Embassy residence in Pretoria, waiting impatiently for the end of a meeting between Rhodesian Prime Minister, Ian Smith, and the American Secretary of State, Henry Kissinger. As the time passed slowly and my seat of stone got steadily harder, the comfortable garden chairs grouped under a shady tree on the front lawn looked ever more inviting. Finally, I mustered my nerve and sat down in one of them. Within seconds a couple of security men brusquely hustled me back to my proper place among the rest of my colleagues.

Seven years later, I had the satisfaction of recalling the episode to Henry Kissinger when I hosted a dinner in his honor, in my new capacity as US Ambassador to South Africa.

The transition from journalism to diplomacy has been satisfying in far more important ways. After some twenty-four years of watching and chronicling the "game of nations" in the press box, the chance to become a participant in a key country at one of the most exciting times in its history has been an exhilarating new challenge.

In many respects the transition was surprisingly easy. Representing and reporting for a leading news magazine on four continents had probably prepared us better for diplomatic life than any other private sector career could have. After all, the professional and social spheres of foreign correspondents and diplomats tend to overlap quite heavily – if only because both are equally interested in finding out what's going on – and are thus drawn to the same people and the same events. Both are in the business of reporting, even if the format of their reports reflects the different needs and levels of expertise of their end-users. (The State Department desk officer doesn't have to be told each time that Namibia was once a German colony which became a League of Nations mandate, etc., etc.) However, even in government bureaucracies a well-written message stands a better chance of getting attention than the one that triggers the so-called "MEGO" syndrome – "my eyes glaze over".

But here the similarities end. For the diplomat the reporting function is only part of his job, though it is probably the most time consuming. The information the embassy supplies becomes the basis for policy instructions to the embassy to take up matters with the host government, and to make sure that it is aware and sensitive to American concerns. The volume, frequency and level of such contacts depends of course, on how active American policy toward a particular part of the world happens to be. In the case of a hands-on policy towards southern Africa it is very active indeed, as the phrase "constructive engagement" implies. In the perception of the Reagan administration, prospects for peaceful change within South Africa (meaning progress in the regional context and progress in South Africa itself) are dependent on each other. This translates into a multitude of "active accounts" which require almost daily contacts, and of which the issues of Namibian independence and Cuban troop withdrawal from Angola, and the strengthening of the Nkomati Accord between South Africa and Mozambique are only the most prominent.

> **‘ . . . we care deeply about the future of this beautiful land and the just aspirations of all its people. ’**

By far the most difficult of all "accounts", however, concerns an area which normally is not a topic of traditional diplomacy at all, and yet determines the quality of relations between South Africa and the United States like no others – South Africa's willingness and ability to move away from the racial injustice of apartheid and towards a more just system, based on the consent of the governed, bears directly not only on the American national interest in a stable southern Africa, but also on deeply felt national values of our multiracial society. This is a reality which some South Africans may bitterly resent, but which is an inescapable political reality just the same. What compounds the problem is the tendency on the part of both South African black and concerned Americans to overestimate the influence which the United States can bring to bear on this delicate process. The principal impetus for change, after all, has to come from within South African society itself. What the United States can do is to lend encouragement and support in the hope that it will help tip the scales in favor of the forces of peaceful change.

To play this role effectively requires both words and deeds. The "deeds" involve the management of now about 10 million dollars in programs ranging from scholarships and educational projects for disadvantaged students, to training for black entrepreneurs and scores of small, community-based self-help projects. The "words" may be spoken quietly when possible, or publicly, when that is necessary, to prevent confusion over our purpose and position.

Since arriving in South Africa, my wife and I have been struck by the warm interest which South Africans from across the political and racial spectrum have shown in us. The unique pattern of having to move between Pretoria and Cape Town every six months, while causing a special problem of embassy management, has also provided us with the opportunity to widen our contacts and deepen our understanding of the country in all its variety. We have attempted to make our houses in Pretoria and Cape Town expressive of the spirit of our country, places where people of goodwill can come together and get to know us and each other, regardless of their race or politics. The tone which we would like to set is that of sincere and candid friends who care deeply about the future of this beautiful land and the just aspirations of all its people. Whether we are succeeding is not for us to say. But notwithstanding the pressures of our job, we find it hard to think of a more challenging and satisfying task. ●

CONTROL DATA
NCR
GM
SPERRY
Ford
CALTEX

SOUTH Africa has long been an attractive avenue for international investment.

It is one of the most stable and prosperous nations in Africa, and one of the few with any sort of commitment to free market principles.

In the past, the rate of return on foreign investment in South Africa has been among the highest in the world – although this has not been true for the last two years.

Thus in 1979, according to a report by the United States Department of Commerce, the average rate of profit on US capital invested in South Africa was 18%, compared with 13% in developed economies as a whole, and 14% in other developing countries.

More recently, *World Affairs Review*, a British publication, reported in 1983 that the average return on investments in South Africa could be expected to be 15%, compared with 10% in the United States and 8%-9% in Britain.

The rate of return on investment here is not, however, the only reason why South Africa has been favoured with foreign money. Other important factors are that profits and licensing fees are remitted regularly and without question; there is no fear of nationalisation; tax rates are relatively low, and there is a well developed transport and communications infrastructure.

For these reasons, foreign investment in South Africa has built up to more than R30 billion. According to South African Reserve Bank statistics, the country's foreign liabilities (foreign investments in, and lending to South Africa) at the end of 1982 amounted to R39,9 billion.

Of this, R9,3 billion (23%) came from "North and South America" – in effect, the United States, with a small contribution from Canada.

Some R4,3 billion, or 46% of the American total, was in the form of direct investment (direct holdings in subsidiaries of US corporations operating in South Africa). The remaining R5 billion was non-direct investment (loans and minority shareholding in South African companies).

Over the past 20 years the "direct" proportion of total foreign investment in South Africa has declined quite markedly, from more than 60% to about 43% now. Though to some degree this can be attributed to the increasing political unattractiveness of South Africa to foreign corporations, it also reflects the growing strength and sophistication of South African industry.

The Reserve Bank figures probably understate substantially the size of foreign investment in this country. For one thing, they are out of date. But even if there has been no additional investment since 1982, the decline in the value of the rand against the dollar would ensure that today's value is at least the stated figure. This would put the current value of American investment in South Africa at around R20 billion.

Research by the US Consulate in Johannesburg has reportedly assessed private United States assets alone in South Africa at $14,6 billion (about R29 billion at current exchange rates). This includes $4 billion of US bank loans and $7,6 billion of American-owned shares on the Johannesburg Stock Exchange. Something like 60% of all foreign-owned holdings on the JSE are said to be in the hands of American investors.

Some 350 American companies operate in South Africa, and about 6 000 do business with this country in one way or another. Many of the largest companies in the United States are among them. More than half of *Fortune's* top 100 US companies have South African subsidiaries.

They include General Motors, Ford (though a recent merger left it a minority shareholder in SA Motor Corporation), oil majors such as Mobil and Caltex, all the leading computer companies (IBM, Burroughs, NCR, Sperry, Control Data), and mining companies such as Kennecott Copper, Phelps Dodge and Newmont Mining.

John Deere, Firestone Tire & Rubber, Colgate-Palmolive, International Harvester, American Express, Citibank and Fluor are all in the spectrum of American companies operating here.

But American involvement in the South African economy is increasingly being questioned, as pressure for disinvestment rises.

This pressure has come at a time when the South African economy is particularly vulnerable. With rates of return lower than

Firestone
AMERICAN EXPRESS

AMERICAN COMPANIES IN SOUTH AFRICA

By Tony Koenderman

they had been in years, the rand at an all-time low against the dollar, and inflation heading for 18%-20% this year, it has never been easier for American business to abandon its investment here.

For all that, most of them seem to want to stay.

"Essentially, the reasons for the US and European presence are similar," said Rod Ironside, a director of General Motors South Africa and president of the Federated Chamber of Industries, last year.

"There is a good investment climate, substantial trade levels, reliable trading partners, a viable infrastructure, natural resources vital to Western and some other industrialised economies, and a track record of requiring limited credit and of paying our way and discharging our obligations on due date."

The disinvestment pressures are strong in the United States, but relatively weak in Britain and Europe, a factor Ironside attributes to America's recent racial history.

In their attempts to satisfy critics of their involvement in South Africa, American corporations have become a significant force for good.

Considerable achievements have been claimed for the Sullivan Code of labour practice. Drawn up in 1977 by the Rev Leon Sullivan, a Baptist preacher and social activist who has a seat on the board of General Motors, the Sullivan Code laid down criteria for the improvement of wages and working conditions of blacks employed by American firms in South Africa.

The code spawned a number of imitators, including the EEC Code and the South African Saccola Code, but only the Sullivan Code has survived.

So far 139 US companies in this country have become signatories, and have contributed $100 million to Black education, housing, training, health, community development and inter-racial programmes of all kinds.

As a result of the Code, claim its supporters, American plants have been desegregated, Blacks are being upgraded to administrative and supervisory positions, Blacks are being trained for skilled jobs, trade unions are recognised, technical schools are being built, and equal pay for equal work has been instituted.

In addition, it is claimed, companies have improved the quality of life for Blacks outside the work place, and are beginning to lobby for an end to all racially discriminatory laws in the work-place.

Recently, the Sullivan Code was tightened to involve US companies more deeply in political and racial issues. The companies are now being asked to use their influence to support the rights of Black businesses to operate in urban areas, to influence other companies to follow the principles of equal rights, to support freedom of mobility of Black workers, and to work for an end to apartheid.

But many American companies resent the Code and its interference in the way they run their businesses, calling it "low-grade blackmail". Such firms, said a report prepared last year for the Heritage Foundation, a Washington-based research organisation, were refusing to adhere to the Code.

The report said participants had to deal with long questionnaires on their activities, submit to an annual audit and pay a stiff fee for the privilege.

Many have done so, investing more than R160 000 in the paperwork alone, only to receive a failing grade from the auditors. Others have refused to invest the time and money, and as a result 30 of the signatories were dropped from the list in 1983.

But for them, and the signatory companies that received failing grades, life has become unpleasant, the report said. They tend to be branded as racists by the media, and they are often the targets of divestiture action.

Such attitudes, however, probably represent a minority view. Lionel Grewan, national co-ordinator for the Sullivan principles, notes that the number of signatories to the Code is rising. There have been 11 new signatories in recent weeks, raising the total to 139. And though this is less than half the US firms in South Africa, the signatories account for 70%-80% of all employment in this country by American firms. Mr Grewan expects this figure to rise to 90% soon.

"Companies in the programme are there of their own volition," he says. "The Code has had a tremendous catalytic effect in fostering improvements in South Africa."

Despite the complaints about the Sullivan Code, and the fact that a majority of American companies in South Africa are still not signatories, many people see it as a positive influence. Many South Africans, though resentful of being dictated to by outsiders, realise that the Sullivan approach is a form of constructive engagement – an alternative to disinvestment.

Roger Crawford, human resources director of Johnson & Johnson Professional Products, says it's "folly" to dismiss the detractors and critics of American business in SA as "irrelevant protest groups holding precarious positions on the far left of the American political spectrum".

Speaking at a seminar on disinvestment in Johannesburg last November, he noted that even those Americans who are favourably disposed towards this country are primarily driven by their own country's ideals of liberty.

"Since the inception of the Sullivan Principles, American business has been in the vanguard of promoting change," he said. "Now the call is to widen that sphere of influence, to examine the fabric of society and speak out on certain vexing issues. The urging is done in the firm belief that business has the ability to become a major force for change." ●

THE OTHER FACE OF AMERICAN BUSINESS

By Ian Wakefield

AMERICANS are inveterate fixers. Some Jeffersonian vision of Utopia, of a better, more perfect world compels them to want to improve conditions they find inferior, to right the wrongs they find unacceptable. This is as true of Americans at home as it is abroad. Americans in South Africa are no exception! Nowhere is this better expressed than in the American sponsorship of "good works" in the Republic.

Since 1977 South Africa has been the recipient of over one hundred million dollars in donations, varying from housing and health care facilities to education and black business development. The main source of funds for these projects has been large US corporations.

The momentum in these projects is significant and many stand as models for South African industry. In some cases these US projects have resulted in the subsequent involvement of South African companies.

A good example is the PACE Commercial College in Soweto. Built at a cost of $5 000 000 it is one of the most advanced schools anywhere in South Africa – black or white. PACE has all the amenities of a first-class institution including twenty eight classrooms with low (1-25) teacher pupil ratio, a computer-based learning system teaching English, mathematics, science and economics. Overhead projection and audio-visual equipment are available, as are language laboratories, typing and word-processing facilities.

While PACE is a private school with tuition at R1 800 per year, no student is turned away, if he can't afford the fees. In fact 90% of students are on scholarships, paid for by US and South African companies.

PACE facilities are not exclusively for the use of its students. The Soweto community is involved too. Soweto residents serve on the school's board of governors and PACE facilities are available after hours for adult education, library research and local presentations.

If PACE is the most visible example of corporate responsibility, South Africa is blessed with hundreds of other lower-profile projects. The "Adopt-a-School" programme has resulted in 76 American companies providing libraries, audio-visual aids and computer assisted education to 150 "adopted" schools in South Africa. A Teacher Opportunity Program (TOPS) operating in four regional units is upgrading the professional competence of teachers in black schools. Technical training courses are part of the development projects of every major US company operating here. Other corporate programmes include housing complexes, "home-owner" programmes, and communtity health care facilities.

Small businessmen have been greatly helped by US corporations in raising capital, setting up businesses, receiving training (both locally and overseas), or even with long term contracts from large American companies seeking to foster black entrepreneurs.

The clearing house for many of these projects is the American Chamber of Commerce. The Chamber began as an informal luncheon club offering some American-South African links. In 1977 it became an official organization affiliated to the United States Chamber of Commerce. Expanding trade between the two countries has been its primary goal, though in recent years it has been more aggressive in its stance.

"There is no doubt," says former Chamber executive director Bisenius, "that the Sullivan Code and the disinvestment issue have changed our role here. We have had to become more active both in the Republic and the United States in discouraging disinvestment. At the same time we have become more involved in promoting the kind of change and development which we, as Americans, would like to see happening in South Africa."

The American Chamber now represents about two-thirds of the 300 American companies based in South Africa. Another third of its membership consists of South African companies seeking links with US companies here, or trade with the US.

The Sullivan Code has undoubtedly prompted a strong response by US industry to the problems of blacks here and to the need to upgrade the lives of black workers and their families. South Africans can learn a little, still, about that good old Yankee virtue, sharing.

* * *

As the whole disinvestment issue heats up a new group has been formed to counteract the growing anti-South African lobby in America. Called the American Association for Trade and Investment its objectives are to protect and expand trade and investment between the United States and southern Africa. Headed by former American Chamber of Commerce executive director, Steve Bisenius, the AATO will be affiliated with the over 300 US companies operating in South Africa and with the eight thousand US corporations currently trading with the Republic. ●

THE VOICE OF INDOCHINA
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Editorial

APARTHEID

Crime against Humanity or Western Anomaly?

by TRAN BINH NAM

Over last few years, hundreds of black Africans in the black townships of South Africa have been killed for their opposition to Apartheid. Apartheid is the name given to the racial segregation policy of South Africa from 1948 when the Congress Party composed mostly of whites came into power. Racial segregation existed at an early time coinciding with the creation of South Africa in 1904, became institutionalized in 1948 and has not changed much from that time on, even with the black uprising following bloody repression by the police in the early 1960s and mid-1970s.

Frontiersmen with an attitude born of exclusiveness and fear, unionists determined to exclude unorganized and cheap non-white labor, and industrialists equally determined to keep that labor unorganized and cheap contributed to the establishment of a framework of segregation.

About 500 laws passed by a Parliament dominated by whites have forced the blacks to live in the townships and require them to have written permission before moving into a city. The right of land ownership for blacks, who number 20 million out of a population of 31 million is limited at 20% of the land. Some kinds of work and services are reserved only to whites. Sexual relations between blacks and whites are made illegal. And the right to vote for blacks is denied by 'law'.

Apartheid as such is worse than anything on earth. It violates the basic human rights granted to man by God. It violates the Charter of United Nations Organization. It violates the common sense of right and wrong. It violates the dignity of human beings.

From certain perspectives Apartheid is worse than Communism. The communists deny in practice all human rights to their people; but nevertheless under a certain facade, the cover of the " dictatorship of the proletariat." The whites in South Africa under Apartheid have eliminated the human rights of 20 million blacks living in their country by imposing a set of laws designed and rubber-stamped by its own Parliament.

By denying to blacks the right to vote, Apartheid is devoid of reason of existence. Its existence is just a manifestation of the law of jungle. And all the people on earth, let alone the blacks in South Africa, have the right to overthrow such a regime by any means available.

Have western countries pay enough attention to the condition of repression in South Africa? No, not enough. Even under the Carter Administration, while violation of human rights was much criticized, Africa was spared from attack, or not attacked as some third world countries like Philippines or South Korea.

I don't agree with President Reagan in his dealing with Apartheid. Why does the president apply silent diplomacy to South Africa, when he is outspoken in condemning the Soviets in their treatment against Dr. Shakarov and his wife? In terms of suffering, all human beings would feel the same, regardless if he is a well known physicist or an illiterate black in a forgotten corner of South Africa.

The situation in South Africa is ripe for armed revolution. Who has the skill and means to ignite that revolution, if not world communism? Western countries must act now and act forcefully, if we don't want to become involved in a can't-win conflict to save South Africa from Communism. It is important that we prevent a victory for communism in South Africa by pressuring the government to abolish the Apartheid.

Apartheid is a crime against humanity, a kind of western cancer. It is our duty to eliminate our own cancer first and to be healthy enough to wage a total war for human rights. ■

THE TENTH YEAR

The decennial year has mystic appeal in Confucian culture and is important in Taoist divination. And nothing is quite as intriguing for pack journalism as A Decade Later. Thus it was inevitable we would be inundated by events, printed words and pictures on the anniversary of the fall of Saigon, April 30, 1975. For the Vietnam communists it was a dubious time for celebration. For the world in general it was only a media event. For American and Vietnamese veterans and the million Indochinese who fled their homelands in the past decade it was a time for rememberance that was tinged with bitterness.

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Hanoi treatment. Official circles in Vietnam, especially within the Party, apparently decided last fall that the event required them to pull out all stops in observance, as one editorial writer put it, of "the most important event in 4,000 years of Vietnam history" (sic). What amounted to blanket invitations went out to bloc countries to send delegations to all Vietnamese provinces. The initial SRV Foreign Ministry response to some 1,100 journalists visa requests was entirely forthcoming. Initial plans were made for major observances throughout the country.

Doubts then crept in, followed by factional disputation at the Politburo level. There were second thoughts about the wisdom of such a high posture celebration. What did Vietnam have to show for the past ten years? A compromise was reached in the Politburo - an observance year, but less elaborate. East Europeans received the suggestions that perhaps smaller, fewer delegations would be better. Many jounalist visa requests went unanswered -probably about 300 of the original 1,000 received replies. Hanoi nixed a previously arranged UNHCR press tour of Vietnamese refugee camps on grounds it could not accommodate the group, although it only numbered 20.

Part of the downgrading effort probably was engendered by the realization that Vietnam has made little progress in the postwar decade, and this is chiefly its own faults; also the awareness that many of the visitors would have been in Vietnam in the earlier years, and could make invidious comparisons. In part the scaledown was surely a matter of impossible logistics. Hanoi has perhaps 200 cadres who can be termed full-time official hosts/guides (or "barbarian managers" as they call themselves privately), that is individuals with experience, political acumen and language capability to chaperon visitors in such a way as to both keep them happy and serve the cause.

Official observances in Vietnam began January 3 with a "liberation anniversary meeting" in Saigon presided over by PB member Le Duc Tho (whose brother Mai Chi Tho is Saigon police chief) and attended by 1,000 cadres who formerly worked at COSVN, the Party control apparat during the war.

This meeting like those that followed was in accordance with Party Circular (issued earlier but published February 13) that fixed requirements for the "Anti-U.S. War Victory Observance", namely that "the main celebration will be at Ba Dinh Hall in Hanoi with lesser celebrations in the provinces." This meant stage center was to be in the North, a plan destined for change.

On March 9th, 1,000 persons attended a rally in Ban Me Thuoc to mark the beginning of the Ho Chi Minh Campaign in 1975 (and acctually the start of the last true battle of the war). It was attended by the PAVN commander at the Battle of Ban Me Thuoc, Lt. Gen. Hoang Minh Thao.

Le Duan went, with Soviet and East European diplomats in tow, to Hue (April 25) and then Da Nang (April 28) for celebrations attended in each case by 1,000 persons. These were modest affairs, designed not to detract from the main event on April 30th

The Ho Chi Minh City observance April 30th probably was more widely viewed in the U.S. and abroad than in Vietnam. It consisted chiefly of a highly martial parade through the center of the city witnessed by nine Poliburo members down from Hanoi and an estimated 200,000 persons. The impression carried by American television was that this was a Vietnam-wide gala event, but that was not the image in Vietnam itself. The Hanoi observances were scrapped (apparently a Politburo decision made in late March).

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To mark the 10th year, Su That Publishing House in Hanoi announced release of several new books. These include Le Duan's Letters to the South, 422 pages of messages sent South during the Vietnam war; The - South: Brass Fortress of the Country, a collection of Ho Chi Minh's writings about South Vietnam; Party Documents On the Anti-U.S. Struggle, which claims to contain documents on the war in the South made public for the first time; and Ideological and Cultural Revolution by Truong Chinh. The publishing house also announced that Le Duan has a second book in preparation on "the new socialist culture and the new socialist man." Earlier in the year a third Le Duan book was released, titled Liberation War and National Defense, a collection of 22 articles and speeches written since the end of the Vietnam War.

On the Tube. For the outside world, most of which did not care very much (the Thai FM said Vietnam was celebrating a catastrophe), the tenth year was chiefly a mass media event that tended to be, as the war itself, dominated by television.

All American television networks and several individual stations sent reporters and camera crews to Indochina or the region as well as throughout the U.S. in search of stories, interviews and graphic images.

Most ambitious television coverage was by NBC, which began 16 months earlier and "spent millions" as spokesman said on the satellite paraphernalia required for broadcasting live from Vietnam. The Today Show's Bryant Gumbel did daily news feeds from Saigon April 22 - May 2, alternating his reports with Jane Pauley's interviews in New York. Marvin Kalb anchored an hour-long "Vietnam White Paper: Lesson of a Lost War" produced by William Turque on April 27.

CBS sent Walter Cronkite and a team to do newsfeeds from Vietnam (the report from Hanoi must have left Hanoi officials wondering whether this was such a good idea; ran a series of special reports on the CBS Morning News (week of April 21) and ran the Cronkite documentary, "Honor, Duty and a War Called Vietnam" (Brian Ellis, producer) for April 25. Congressman John McCain (a Vietnam War POW)traveled with the CBS team. Ed Bradley and a Sixty Minutes team filmed in both Vietnam and Kampuchea.

ABC's Richard Threlkeld and James Laurie did a series of broadcasts from the region called "Return to Vietnam", including an April 5th interview with SRV FM Nguyen Co Thach. Ted Koppel's Nightline was broadcast live form Saigon April 30 (the 29th, U.S. time). Le Duc Tho and Henry Kissinger were both on Nightline April 29, which was a delight to watch. Steve Bell also did reporting from Vietnam for ABC's Good Morning America. These were transmitted via the Soviet satellite system that links Vietnam with Moscow (CBS was reduced to flying its programs on an Air Vietnam plane to Bangkok for onward relay).

Peter Cleveland of ABC radio, in what must be a Guiness Book of Records entry, broadcast 230 Vietnam war programs in April, all five minutes or less in length and fitted in among the commercials.

PBS sent George Esper (veteran AP correspondent) and a film team to Vietnam. (Esper also reported for AP; also see his April 28 retropective interview with General Westmoreland saying we should have invaded North Vietnam). The 10th year was also dealt with several times on the MacNeil-Lehrer Report. In April PBS announced that the documentary produced by Accuracy in Media (the journalistic watchdog based in Washington) titled "Television's Vietnam: the Real Story", which is a rebuttal of PBS's series "Vietnam: a Television History", would be aired June 26th. This was considered a victory by the critics of the original 13-part PBS series. It also represents something of a first in television history, an independently made news documentary answering a network news documentary.

Television crews from West Germany, Austria and Japan converged on Vietnam and also fanned out across the U.S. to do filming and interviewing. Undoubtedly there was much other television coverage of which we are not aware.

Press Treatment. All major U.S. newspapers and newsmagazines provided special coverage of the tenth year. A number of books also were scheduled for release timed to the event. In many instances the reporters or writers were Vietnam war returnees going back to their old haunts to find that many of the military installations they knew had simply changed hands, that their former digs are now occupied by Hanoi officials or Russian advisors.

The March 31 issue of The New york Times Magazines was a special edition titled "Vietnam in America:Ten Years After the Fall of Saigon." It contained six articles dealing variously with the war's legacy and our collective memory of it; the influence Vietnam wrought on U.S. culture and arts; a U.S. public opinion survey; and interviews with four ex-Marines and a disillusioned Viet Cong cadre. Also in The Times (March 24) was an op-ed piece, "10 years Later, Lessons of the Vietnam War" by two Georgetown University professors, Allan E. Goodman and Seth P. Tillman. "TV's Legacy from a War" by John Corry (April 21) looked back at television and the war.

As part of its regular news coverage, the Times also carried Vietnam and Vietnam related stories. Barbara Crossette reported frequently from Vietnam, Bangkok and the Kampuchea border. Her "Vietnam, North and South: Still two worlds" (Feb. 1) was highly interesting and well done. See also Jan. 27. Fox Butterfield (April 17) crossed the U.S. to write a lenghthy story on the experiences and condition of Vietnamese emigres after ten years. Leslie Gelb (April 17) looked at the geopolitical dimension and found the U.S. to be stronger regionally than at any time since the shambles of 1975. Also first rate were Charles Mohr's "History and Hinsight: Lessons from Vietnam" (April 30) and Barbara Crossette's reporting from Saigon on the April 30th parade and celebration (May 1).

The Washington Post ran a 15-series of articles on the Vietnam War and the aftermath, mostly by staffers. It began April 14 and ran the gamut of Vietnam War subjects and areas of relevance. Among the best were: Don Oberdorfer's well reasoned "The War That Didn't Change the World"; Ward Just's mood piece, "Saigon in the 60's: Salon Surrealism"; William Branigrin's excellent April 24th article from the region; and a good articles on the war and the homefront, "The War's Final Battle" by Richard Harwood and Haynes Johnson. The New York Times and the Washington Post series were syndicated and appeared in various newspapers around the U.S.

The Washington Times Sunday Magazine (April 28) was devoted to a retropective view and included a 3,500 word article by Douglas Pike.

In early January The Wall Street Journal began a series titled "Vietnam's Legacy" in its front page lefthand column. Barry Wein reported from Hanoi (March 25,27) painting as grim a picture of postwar Vietnam as has been written. Lee Lescaze and Anne Mackay-Smith (Jan. 24) reported on Teaching the Vietnam experience in American colleges and universities. James Sterba and Lescaze (March 14) examined the aftermath of the war from the ASEAN perspective. Other reporting in the series: James Perry (Feb. 28) about meaning of the war at West Point, the Yale Divinity School and elsewhere; Dennis Farney (March 11) asking retropective questions of such wartime figures as William Fulbright, George McGovern and Les Aspin and predictably getting woolly answers; and David Rogers (Feb.11) interviewing several Vietnam veterans who have made it big in government and elsewhere.

See also veteran correspondent Peter Kenn's first rate highly personalized report from Saigon City (April 23) and the April 30th article on the economic meaning of the war, which is the kind of journalism the Wall Street Journal handled best; editorial "The Vietnam Wound" of the same date is also commended.

The Los Angeles Times April 28 and 29th editions carried a multiple entry series, "Vietnam A Decade Later", with lengthy articles by Robert Scheer and Norman Kempster and reportage from Vietnam by Bob Sector and Nick Williams; also the results of a public opinion poll on the war by Cathlen Decker, and a Q-A interview with Henry Kissinger (April 28th). USA Today sent veteran foreign correspondents Don Kirk back to Vietnam on assigment (late April editions). Patrick O'Driscoll did a long story April 26, "Vietnam Changed Us All". And Jon Scruggs (major figure in building the Vietnam Wall in Washington) was interviewed April 29th in USA Today. Paul Quinn-Judge did a series in late April for the Christian Science Monitor, including a personalized reminiscence (April 26), "One Man Remembers".

Foreign coverage included a first rate 4-part series (Jan. 14-17) in the Financial Review (Australia) by Michael Byrnes, that had the advantage of being long enough to permit the kind of depth reportage not posible in much of the American output in which text tends to be squeezed out by photographs and other art work.

The Sunday supplement of the London Observer April 26 contains a 12 page section titled "America Ten Years After Vietnam" which attacks such media stereotypes as the Vietnam veteran as a drug crazed psychopath. The same edition of the paper carries a report from Saigon by a long time foreign correspondent Gavin Young.

Le Monde of Paris (April 15) carried a 10-page special section that focused on Kampuchea rather than on Vietnam; it included an interview with Hanoi officials by Charles Fiori.

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Virtually all of the major American magazines carried special sections or cover stories on the tenth year.

The Newsweek cover article, titled "The Legacy of Vietnam", ran to more than 33 pages and required the services of some three dozen writers, editors, photographers and researchers. It appears that some text was squeezed out by graphics. See also Newsweek on the media in Vietnam (April 22).

Time also carried a special issue on Vietnam, "Vietnam Ten Yaers Later" (April 15) mostly on America ten years later but with some good photographs of Vietnam today.

The Far Eastern Economic Review was pointedly not invited to join the horde of journalists called in to witness the tenth year observance up close. Hence FEER was obliged to report it from outside in its May 2nd edition, which includes a waspish colums by editor Derek Davis outlining the absolute incompatibility of official Hanoi attitude and honest journalism.

U.S.News and World Reports sent its long time correspondent Robert Kaylor back to Indochina early in the year and he reported from Hanoi (Jan. 14), Saigon (Jan. 21) and Kampuchea (April 1). See also "Vietnam: The Lasting Impact" (April 22).

Print media clearly remains number one for those seriously interested in contemporary Indochina. And the real meat of what has been produced this spring came not from the newsmagazines but from elsewhere in the periodical world.

What will probably prove to be the best and most lasting reporting will be Robert Shaplen's two part series in the April 22nd and 29th editions of The New-Yorkers. Sharlen, the most skilled and experienced Vietnam war era reporter still in the business, was in Vietnam late last year. He traveled extensively and had access to the wide range of Vietnamese, spending as much as nine hours with some Politburo members. His series ran to nearly 40,000 words, and given the insightful and meticulus reporting for which he is known, should be superior to anything else produced by way of tenth year retrospective.

Another superior article to come out of this moment of reexamination is titled "The Lessons of Vietnam: Ten Years Later" by Russel Hittinger (University of St. Louis) in a publication called Catholicism in Crisis. It is an excellent essay, both thoughful and thought provoking, on the course of U.S. public opinion about, and book writing on, the Vietnam War during the past decade. Hittinger notes many ironies and paradoxes, and introduces a term -viet chic- which should be useful in dealing with some of the Vietnam War writing TV foist on us. The article is unreservedly endorsed. It deserves wider readership qhan it probably will receive. (Magazine address: P.O. Box 495, Notre Dame, Indiana 46556).

"A Veteran's Return to Vietnam" by William Broyles Jr. in the April issues of The Atlantic is an account of a semi-sentimental journey back to Vietnam by an ex-Marine and ex-Newsweek editor. Broyles trades stories with PAVN generals, gets the standard tour of bomb damage, learn that Ho chi Minh's remains are shipped to Moscow annually for refurbishment, visits his old stamping grounds (including Hill 10) around Da Nang and experiences the disparity all visitors find between Hanoi and Saigon. Broyles is a sharp-eyed reporter and his article is recommended reading.

The January issues of The Atlantic carried an incisive article, "Vietnam's Vietnam" by Stephen Morris which traces the history of Vietnam's bogged down war in Kampuchea and argues forcefully for a greater U.S. support role for the resistance there. The article has drawn considerable comment. Morris, an Australian and Columbia University doctoral candidate, currently is working on his thesis at U.C. Berkeley.

The New Republic's April 29th issue, "Vietnam: Ten Years After", includes articles on the anti-war movement (for and against), the fall of Phnom Penh, Vietnam since 1975, the legacy of the war, and a long retropective review of Frances Fitzgerald's Fire in the Lake. All seek to strike out into new ground rather than, as is the case with the newsmagazines, chew old garbage. And are among the most readable of the welter of material produced by the tenth year.

In "Vietnam: The Retropect", Foreign Affairs Quarterly, spring 1985, are two lenghthy articles, "Lessons of Vietnam" by David Fromkin and James Chase, and "Coming to Grip with Vietnam" by John Wheeler.

Veteran foreign correspondent Alan Dawson in Soldier of Fortune (Feb.) wrote "Saigon Revisited: Bitter Memories Haunt Ho chi Minh City", a mood of the "back in Saigon" variety.

Joan Baez' Humanitas International Newsletter (Vol 1, 1985) contains an article by Jean Feedberg, "Vietnam: Ten Years Later: Still No Peace", with text suggested letter to be sent by concerned persons to PM Pham Van Dong in Hanoi urging an end to Vietnamese reeducation camps.

Unte Magazine (Oct-Nov. 1984) reprinted six articles from small circulation periodicals of left wing persuasion.

Even Peole Magazine (April 8) tracked down an ex-spook, O.B. Harnage, whose chief claim to fame seems to be that as the last American to leave Vietnam in 1975, he turned out the light.

Historian Henry Steel Commanger wrote an article for Newsday (April 28) in which he outlines the historical benefits to accrue from the outcome of the war. And the fear and loathing of the war is described by Hunter S. Thompson as only he can discribe, in Rolling Stone (March 28).

The counterculture press, what there is left of it, noted the anniversary in expected fashion. The Boston-Phoenix, the city's major underground weekly, in its April 30th edition devoted some 20 pages to a special section titled, "The War Goes On". And People's World (New York and Berkeley) April 27 "The Legacy of Vietnam" was a one-note symphony of American guilt and shame, and prediction it is all to be repeated in Central America.

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While April 1985 may be described as "Americans qndulging in an orgy of Vietmania" (The Economist, April 13), the output (with the exceptions noted above) has been neither sufficient intropective nor of adequate depth. Aside from personal memories of veterans and long overdue note taken of the contribution and sacrifice of America soldiers, most reportage -and this seems particularly true of the news magazines- reads as if it came out of a 1975 time warp. There is still the tendency to be seduced by the trivial and episodic, and one is truck by the long string of cliches, historical fictions and social myths, circa 1975, but written as if these were still live and viable. Most never were - and while there was some excuse for believing them in 1975, there was none today.

In the past ten years we have learned an enormous amount, particularly about the other side - the North Vietnamese, the Viet Cong, and the USSR and China in their wartime roles. Most of this new information comes from the other side, a veritable flood of books and articles where once there was less then a trickle. We now know a great deal more about what was going on in North Vietnam at the time, about the strategy used by PAVN against us, and about relations in the Hanoi, Moscow and Beijing triangle. Almost none of this is reflected in the tenth year reportage. It was mostly dominoes and the Gulf of Tonkin.

A second characterization is the highly parochial nature of the America produced materials. Writing about the Vietnam War commonly is neither about the war in America or Americans in the war.

Finally reportage was ubiquitous but so transient - Andy Warhol's commentary that we are all famous for 15 minutes. From San Jose, California, where the Mercury News produced an impressive special edition on the "Fall of Vietnam" to Australia's Wollongong conference, "Vietnam: Ten Years on", it was a momentary return to the limelight for Vietnam.

Academia,etc. Taking note of the 10th year of history is not an activity considered particularly appropriate for the serious historian or scholar. Ten years has no moru meaning than nine years or eleven years; history is seen as a river of events, not something that can be chopped into time frames.

There was a good deal of academic activity on the tenth year, however, but it was difficult to track. Special events were held at the University of Berkeley, including a day long seminar on Kampuchea; at the University of Southern California, Harvard University and undoubtedly at other institutions.

"An Emergency Scholar's Conference on Khmer Culture" was held in Washington, D.C. April 25-26, sponsored by Save Cambodia, Inc., a Cambodian refugee group, under White House auspices.

The Asia Society in New York on May 7-9 has staged a conference titled "The Vietnam War in American Literature", the speakers' list reads like a Who's who in Vietnam War fiction.

Amnesty International organized a photographic exhibit of the work of David Hawk. It is now making the rounds in the U.S., having opened March 28th at the War Memorial Building in San Francisco.

University Publication of America issued a call for papers for a publishing venture to be titled Vietnam- in Retropect: What Kind of Legacy. Its flyer lists ten suggested topics; lenght is limited to 15 pages. (Address: 44 North Market St., Frederick, MD. 21701).

Emigre Remembrance. One of the most encouraging aspects of the observance of the tenth year has been the increased interest shown by ethnic Vietnamese students on the American campuses. The Vietnamese Students Association and the Department of Political Science at the University of Southern California April 13 staged a 13-hour conference with several dozen speakers, the majority of whom were Indochinese. A similar affairs was held April 30th by the Harvard Vietnamese Student Association and the Kennedy School of Government. What is notable in them is that they are the work of young Vietnamese, and that most of the participants are Indochinese not westerners.

Another event worthy to note: On April 14th, in Santa Ana, California, the Vietnam Studies Group presented a collective work titled "Vietnam 1975-1985: Retrospect and Prospect". This is a first. (P.O.Box 5248 Santa Ana, CA. 92704)

Among older Vietnamese, Khmer and Lao in this country - the total is about 600,000 of whom about 50 percent are teenagers or younger - the anniversary of the day they lost their respective countries is a highly painful one. There cannot help but be remorse and regret, hence the emigres had at best mixed feelings about making much of the day. Observances in Indochinese communities were held, most conducted in a sober low key fashion. In most localities, April 30th was billed as "Day of Shame", much as the July 20th Geneva Agreement anniversary was observed in South Vietnam during the war years. Ethnic Vietnamese students in dowtown San Jose, California, which has a large Vietnamese population, staged a protest against a Young Socialist Alliance conference which, the Vietnamese said, was "celebrating the fall of South Vietnam". For most Vietnamese living in this country, however, it was also a day to look back in gratitude that they survived the decade and, at least compared to their compatriots back in Indochina, have thrived and can look forward to a prosperous future. ■

CLANDESTINE LAUGHTER
IN POST-75 VIETNAM

Hostility

The headlines of the newspapers in Saigon, now Ho Chi Minh City do not bring the latest news: they run like this: "Bring in the harvest without losing a grain!" or "Do not delay sowing the winter wheat!" The southern part of South Vietnam, incidentally, produced enough rice for export before the Communist took over.

The four arch-enemies of socialist agriculture: Spring, summer, fall and winter.

INDOCHINA NEWSREEL

(Reprint from INDOCHINA CHRONOLOGY, a quarterly publication of the Institute of East Asian Study)
Volume IV, Number 1, January-March 1985

VIETNAM CHRONOLOGY

Jan. 1 - Vietnam's population at the start of the year is fixed at 57,372,000. Population of Hanoi is listed as 2,674,000. Population of Saigon, now Ho Chi Minh city listed as 3,293,146 (June 1984). Vietnam Courier, Jan. 1985.

Jan. 8 - Vietnam communists execute three freedom fighters charged with espionage in December 1984 in trial of 21 defendants in Saigon. Five originally received death sentence, two commuted to life imprisonment after appeal from France, including alleged ring leader Mai Van Hanh, whom Paris recognized as a French national. The five were accused of belonging to United Front of Patriotic Forces for the Liberation of Vietnam, a resistance group in southern Vietnam supported by China and Thailand. The French Foreign Ministry and the National Assembly president expressed "grief and indignation" at executions. Following reports of executions, France reportedly tells Vietnamese Education Minister Nguyen Thi Binh to postpone her late January trip to France at French education minister's invitation.

Jan. 14 - Hoang Tung, CPC CC secretary, tells Pravda correspondent that the Party's Sixth Congress will be held sometime in 1986; earlier he had been quoted by foreign journalists as saying it was scheduled for mid-1985. Tung also says the Party "demands" that Vietnam's decade long economic decline be halted during 1985, and predicts in the next five years these production increases: electricity 9 percent, chemical fertilizer 10 percent, coal 14 percent, and construction materials such as cement 27 percent.
(Editor's note: In May 1975, Le Duan VCP's boss declared that in one year and a half every Vietnamese will have a TV set and a refrigerator; and in three years every worker will have two weeks vacation a year!)

March 7 - A petition signed by 765 Thai intellectuals is sent to CPV Secretary General Le Duan in Hanoi, belling for an end to Vietnamese occupation of Kampuchea and for a negotiated settlement of the Kampuchean problem. This is a first for Thai academics.

Year of Buffalo - Vietnamese emigres celebrated Tet to welcome in the Year of Buffalo beginning February 20, based on the traditional lunar calendar. Hanoi officials, in what appears to have been an anti-Chinese gesture, ordered observance on January 21. Their explanation, that the calculation was based on the Gregorian calendar, is found in the January issues of Vietnam Courier. The result, reports filtering out indicate, is that people in Vietnam celebrated the festival on both dates.

Cam Ranh - During the quarter ending March 31, there were numerous reports, most of them traceable to Thai intelligence, of increased shipments of military hardware into and through the Soviet base at Cam Ranh. The Thais were particularly exercised over the reported arrival of 14 Mig-23 fighter-interceptors. Thai PM Prem Tinsulanon at a January 17 conference in Bangkok termed the shipment a "serious threat to the security of the whole region and beyond". The threat thesis was picked up by Beijing mass media and echoed by PRC Admiral Fu Jize visiting Bangkok. In addition to the Mig's the Soviet air inventory at Cam Ranh is believed to include 16 TU-16 bombers and 8 TU-95 electronic reconnaissance planes. Thai Admiral Sirithon in mid-January said recently there had been a 20 percent increase in the number of Soviet freighters entering Cam Ranh Bay, most of them believed to be carrying military cargo including the new SAM 7-B portable ground to air missiles which the Thais fear will be used against their planes flying the Kampuchean-Thai border.

Refugees: A roundup of refugee statistics as provided by Refugee Reports (P.O. Box 41094, Nashville, Tennessee 37204) 1975-1985:

Boat People

Country	Arrivals	To U.S.
Hong Kong	122,432	49,812
Macau	7,589	2,427
Indonesia	91,707	41,398
Malaysia	202,120	85,656
Philippines	34,254	9,364
Singapore	30,614	5,325

Thailand	78,335	26,292
Other	39,712	6,092
Total	606,763	226,366
Land Refugees:		
Thailand	563,147	180,890
Orderly Departure Program:		
Thailand	76,051	20,160
VN to U.S. 1975:		124,547
VN to China 1977/79:		263,000
Refugee Processing Centers		211,881
GRAND TOTAL:		1,633,508
To U.S.:		731,079

May 31 - U.S. citizens of Vietnamese origin living in Virginia played an active part in the State Republican Party (GOP) convention in Norfolk on May 31 and June 1. The convention was held to choose the candidates who will represent the GOP in the fall elections for governors, lieutenant governor, and attorney general.

Mary Chi Ray, a realtor from Annandale, Virginia, was a floor leader for conservative Richard Viguerie. Ray, who worked for the Reagan-Bush campaign in the most recent Presidential election, sees Vietnamese participation in the Virginia State elections as a healthy continuation of the 1984 campaign.

"Nineteen eighty-four was the first year that large numbers of Vietnamese engaged in American politics," she said. "It's important that we continue to be active in local, state and national politics.

Although a conservative Republican, Ray wants Vietnamese to participate in politics even if they are Democrats. "There are certain interests common to all Vietnamese", she said. "It's important to have people in both Parties so those interests are considered. It's also important that the American community as a whole recognize that the Vietnamese are concerned citizens who can engage in serious public debate."

Hollywood California - At a highly emotional event held in Hollywood, early this year, Haing S. Ngor, a Cambodian refugee, was awarded an Oscar for his role in the famous and much watched film The Killing Fields.

Accepting the prize, Mr. Haing S. Ngor a medical doctor declared: " I survived four agonizing years of fear, torture, starvation and deprivation under the communist regime in Cambidia - so I am not one to take America and all its many freedoms for granted.

"My country, too, once was free. I became a doctor, and my practice prospered ... but in a single day, the prosperity ended.

"Suddenly, Khmer Rouge guerrillas invaded our capital of Phnom Penh and there was wholesale terror and the slaughter of hundreds of thousands of innocents.

"I watched helplessly while my own sweetheart died of disease and starvation in my arms. To survive I was forced to eat scorpions. I was captured and tortured three times by guerrillas. Once they bound me to a tree crucifixion-style and lit a fire under my feet. For four days and three nights I endured unbelievable pain.

"So the reasons why I love America are very basic - but to some who cannot understand what I have been through, they will seem startling.

"I love America because here I can sleep peacefully at night in an apartment, not on the bare jungle ground, bidden to avoid capture. It is also comforting to know that I can sleep with certainty that I won't be awakened by armed soldiers, prepared to place an airtight bag over my head to force me to confess that I am an educated professional and then kill me when I confess.

"When I become an American citizen, I will once again be able to vote in free elections, and that means a lot to me. I think this is a very important American freedom you can't appreciate until you 're forced to live in a totalitarian country.

"Finally, I love America because this country has provided me with a truly unbelievable opportunity.

"Where else could a 36-year-old refugee from a torture and starvation win an Oscar without ever having acted before? It's unbelievable and unbelievably wonderful.

"But so is America!"

KAMPUCHEA CHRONOLOGY

March 12 - Hun Sen outlines six requirements for Kampuchean settlement, (as presented to Australian PM at Ho Chi Minh City March 9): 1) elimination of Pol Pot forces by political and military fields, 2) withdrawal of Vietnamese troops (after Pol Pot is eliminated); 3) free and supervised elections (can be done immediately if certain individuals and groups - read Sihanouk and Son Senn - join PRK against Pol Pot 4) creation of peaceful coexistence and stability among SE Asian countries with different social and political regimes, cessation of all interference by countries outside region, and creatiun of international guarantees and supervision of above agreements. Apparently presenting the same list to Australian journalists accompanying Hayden, Hun Sen made it clear elections would be conducted under PRK constitution and only one political party -the KPRP- would be permitted. Returnees (Sihanouk, Son Senn) could run as independents. He also told Australians a time limit (some say 1987) would be set for resistance group to return to PRK. Vietnam apparently had approved the six points, which are in pratice a plan for others to surrender.

ASEAN Gauntlet - The ASEAN foreign ministers meeting Feb. 11 in regular session in Bangkok issued a hard hitting seven-point statement on Kampuchea. Point seven called on "the international community to increase support and assistance to the Kampuchean people in thier political and military struggle to liberate their homeland from foreign occupation." Although the U.S. was not named, this was immediately interpreted by observers, the press and Hanoi as a call on the U.S. to start shipping guns at least to the non-communist elements to the CGDK, apparently that had been the foreign ministers' intention.

It put the U.S., which has consistently said it practices deference to ASEAN on policy matters related to Indochina, into something of a bind. While it can be argued that the CGDK actually does not need additional weapons, and while it also can be argued that at best such a U.S. move would have as many negative as positive results (the Administration is fearful of domestic U.S. reaction, since the U.S. press inevitably would bill it as a U.S. military return to Indochina), it cannot be argued that a U.S.-ASEAN split or even public disputation over the matter is in the interest of either. The Administration's first response was flat rejection of the ASEAN proposal. Later this was changed to "rejection for the time being."

All of this was closely watched by Hnaoi. The Administration's altered response was a wise move, if for no other reason than it does not give gratis to Hanoi something it might be willing to purchase.

Parallel to, but independent of these developments, Representative Stephen J. Solarz has introduced into Congress legislation to tack on an additional $5 million for Thai military aid appropriation with the proviso it be earmarked for Kampuchean resistance use. There are two stipulations: that none of the aid directly or indirectly goes to the DK, and that its transfer does not involve any American personnel. The legislation at this writing has an uncertain future.

A radio Hanoi editorial March 26 argued that U.S. asserted that efforts to help the resistance would be futile, said the situation in Kampuchea was "irreversible" and expressed the hope that warnings would "cool down the hot heads in Washington that are contemplating the perilous gamble of interfering in the Cambodian situation." (sic)

CGDK Travels - Norodom Sihanouk, his son Prince Norodom Ranariddh and Son Sann were on the road again during the quarter Jan. thru March, 1985 attempting to bolster faith in their cause and raise money. Son Sann, who was in Thailand most of the quarter, left March 30th for the U.S. where he had appointments with President Reagan and other top U.S. officials and was to speak at the Washington Press Club.

LAO CHRONOLOGY

March 6 - Australian FM Bill Hayden arrives in Vientaine for one-day visit on his way to Vietnam. He meets Lao FM Phoun Sipaseut, visits some Lao-Australian cooperation projects in Vientaine, and pledges an aid increase of (Aust.)$1 million for each of the next three years - A$3.3 million for 1984-85, A$4 million for 1985-86 and A$5million for 1986-87. Current rate: one Australian dollar equals US$.70.

March 9 - UNESCO general director A.M. M'Bow and Lao UNESCO committee director Professor Bontiam Phitsami sign cooperation agreement to fend construction of a branch of the teacher's college in southern Savannakhet Province; to enlarge the state polytechnic in Vientaine; to construct in Laos a foreign languages university, a traditional art school and a mass-media school: to restore some Lao historical sites; and to establish a scientific and technical research center.

March-16 - Thai army official (Armed Forces chief of staff General Pathom Samsin) charges that about 2,000 Thai communist insurgents are being trained in Vientaine-run camps along Laos-Thai border.

March-30 - Japanese sources say the USSR has 1,600 advisors on duty in Laos. The reports says the USSR has constructed three new airbases (Ponsavang, Seno, Songkong provinces), a military facility in the Boloven plain; and a satellite base at Wattai airport near Vientaine to monitor China and Thailand. In recent years, the USSR has supplied Mig-21 fighters, MI-6 type and MI-8 type helicopters and SAM-7 land to air missiles to the Lao air force. the Soviet Union has promised $600 million in military aid to Laos in the next five years. ■

BOOKS

- TO BEAR ANY BURDEN - by Al Santoli. An impressive work. Santoli has assembled a collection of biographical interviews with Vietnam War figures, then put them into five structured thematic sections. Some 50 persons speak: middle-rank American officials; a scattering of journalists and other observers; and a commendably extensive list of Vietnamese, Khmer and Lao. The strength of Santoli's work is the deep insights it give to the readers about the other side which generally overlooked by 'researchers'. "To Bear Any Burden" is therefore an interesting and readable product. E.P. Dutton, Inc. 2 Park Ave. New York, N.Y. 10016. ■

FLOWERS FROM HELL

The following poem were written in 1962 by a poet and political prisoner in North Vietnam, Nguyen Chi Thien. This was about life in a communist concentration camp somewhere in North Vietnam. His poems were smuggled out of Vietnam in 1979. A collection of his poems has been translated by the Vietnamese scholar Huynh Sanh Thong and is available for $7.00 for the first copy (including shipment) and $6.00 for each additional copy from Yale Southern Asia Studies, Box 13A Yale Station, New Haven, CT. 06520.

Latest news about Nguyen Chi Thien: The International Herald Tribune in London on June 22 printed an article titled The Vietnamese cry of a poet describing the life of Nguyen Chi Thien. The 52 year old poet has been a prisoner of the communist regime in Vietnam as long as 23 years. He is currently imprisoned in Hoa Lo, Hanoi (the U.S. prisoners labeled it Hanoi Hilton).

According to the article, Nguyen Chi Thien -during the period of "Hundreds flowers bloom" in 1959 - submitted a request to the authorities to publish a magazine named Vi Dan (For the People). The permit was not forthcoming. Then the police searched his house and found many poems by which Nguyen Chi Thien was accused of promoting anti-government activities. He was condemned for two years in a labor camp in Yen Bay.

Not long after freed from Yen Bay he was arrested again. He was then in and out of prisons for the next several years. On April 2, 1979, he was arrosstad in Hanoi after he successfully threw his collection of poems over the gate of the British Embassy. He has been confined in Hai Phong until recently when he was moved to Hoa Lo prison.

We All Live In A Valley Bed

We all live in a valley bed,
ringed on four sides by woods and hills, cooped up in
rows of thatch-roofed huts
with mosquitoes, bedbugs, sweat, dark night
We trade diseases - a dead-end life
soaked in despair, with souls and bodies shred.
Call this life for humans, or is it
for dogs and buffaloes? It's past compare.
Work till you drop or ropes will tie you up.
Though sick, don't moan
or rifle butts will poke your back.
You will resist? Beware
dark cells and irons crushing feet,
by pains and griefs too numerous to tell.
A prisoner's life is endless shame.
On days when rain is pouring down,
We all go out and stand there in the yard.
The guards search us from top to toe
and seize this treasure they're to burn - a rag.
O Marx, you old son of a bitch,
is this the paradise you promised once?
Even sick, dying men can't be excused -
let 'em stand in the rain and get soaked through.
I have lived here down in the valley bed
for less than a month so far.
But winter's coming soon -
hunger will be accompanied by cold:
how many times will suffering then insrease?

(1962)

HANOI SUED BEFORE THE UNITED NATIONS

The President of the Committee for the Human Rights in Vietnam, has filed in the United Nations in New York a 500-page document against Hanoi Government for "gross and consistent violations of human rights, and for abuse of the civil, political, economic, social and religious liberties of the Vietnamese people" on April 30th, 1985 marking the tenth anniversary the day South Vietnam fell under the invasion of Hanoi Army.

The Committee for the Human Rights in Vietnam is located at 25, Jaffeux Street, 92230 Gennevilliers, Paris, France, headed by Mr. Vo Van Ai a well known journalist.

The document describes the Hanoi system of surveillance of the population by exposing in details the system of "Ho Khau" and "Cong An Khu Vuc" or Precinct Security Cadres in Saigon, now Ho Chi Minh City.

The second part of the document is about Religious Repression, in which Mr. Vo Van Ai printed a Petition of Venerable Thich Quang Do to the communist authorities and a speech of Father Chan Tin at the 7th Congress of the Vietnam Patriotic Front Central Committee held in the early of January 1982, in which he pointed out several questions which have not yet found a solution. Those questions were: "The Respect of legality", "the Policy of the Great Union" and "the Liberty to believe or not believe"

The most sensitive part of the document is about the Prison System exposed by three former political prisoners: Mr. Tran Nhu, Mr. Tran Huynh Chau and Dr. Nguyen Van Lien.

As a member nation of the United Nations Organization, Hanoi is entitled to be sued and the case will be tried before a multination judiciary. The procedures require the document to be sent to the defendant nation. Hanoi has the right to defend itself before The International Court of Justice if the case is referred to the Court by the General Assembly or by a specialized Committee authorized by the General Assembly.

The Voice of Indochina echoes the plea of Mr. Vo Van Ai requesting all concerned people in the world to write to the U.N. General Secretary Javier Perez de Cuellar asking the United Nations to send a fact finding committee to Vietnam.

Address: The Secretary General
United Nations
New York, N.Y. 10017

Clandestine Laughter in Post-75 Vietnam

First Aid

A newly-arrived communist cadre from North Vietnam was to be named Party Secretary of Mocay district. He usually drove a motorcycle to inspect the collective farms in his district. On windy days, to keep the wind out, he wore his coat backwards.

One day he fell, and an ambulance was sent for. When it arrived, he was dead.

" He was still alive after the fall," reported the peasants. "But he died when we turned his head back into the right direction..."

Patrol in threes

Why do members of the secret police patrol in threes?

One can read, one can write, and the third keeps an eye on these two dangerous intellectuals.

Out of His Senses

A man is sent to a two weeks' indoctrination course. When he returns, he sees a doctor.

"Doutor, I am losing the co-ordination of my senses! With my ears, I hear one thing, but with my eyes, I see quite another..."

The Voice of Indochina is published by The Vietnamese Nationalist Force and The Federation of Young Vietnamese Volunteers.

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CLANDESTINE LAUGHTER IN POST-75 VIETNAM

Contraband

The penalty for stealing "National Property" (company, i.e., Government, property) is in all Communist countries much higher than for theft from an individual owner; the former is, of course, much more widespread.

Armed security guards are posted at the entrances to all larger factories and more important offices. Part of their job is to prevent theft of "national property" by inspecting employees' briefcases as they leave the gates.

A worker leaving a factory wants to pass through the gate with a wheelbarrow full of sawdust. The guard feels through the sawdust, but finds nothing.

"OK. You can go."

Next day the worker is there again with the sawdust. This time the guard make him spill it on the floor and goes through it with a rake, but finds nothing.

This goes on for two weeks, and the guard is growing sick with frustration. But he is determined to get to the bottom of this. So he invites the worker for a drink and keeps filling it up until the worker's tongue loosens up.

"It's like this," says the drunk worker. "I needed to make a rabbit pen so we could have more rice. And you know how difficult it is to get wood. So I make it out of the fourteen wheelbarrows...

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European Community NEWS

No. 24/1985
August 8, 1985

Contact: Ella Krucoff
(202) 862-9540

EUROPEAN COMMUNITY CONDEMNS SOUTH AFRICAN APARTHEID AND SUMMONS 12 AMBASSADORS

The European Community's 10 member states, along with future members Spain and Portugal, have summoned their Ambassadors from South Africa for consultations on the deepening crisis over that country's apartheid system.

The Foreign Ministers of the 12 countries agreed on that action during a special meeting on South Africa July 31 in Helsinki. The Ministers issued a statement condemning the recently imposed state of emergency in South Africa, and the refusal of South African authorities to meet with black leader Bishop Desmond Tutu. They called on the government to open a dialogue with all representatives of the black majority, including those in prison.

The Ministers also reaffirmed their July 22 declaration calling for the immediate release of imprisoned black opposition leader Nelson Mandela, an end to detention without trial, a halt to forced removals of blacks from certain areas of the country, and repeal of discriminatory legislation.

The summoned Ambassadors will be consulted about policies the Community could adopt to help bring about an end to apartheid.

In addition, the Foreign Ministers of Italy, Luxembourg and the Netherlands and a representative of the E.C. Commission will visit South Africa to relay the Community's concern over the deteriorating situation there.

OTHER E.C. ACTIONS

The E.C. Commission and the European Parliament have also expressed their opposition to South Africa's policies of racial segregation and white-minority rule.

The Commission warned in a July 31 statement that unless the country moved quickly to dismantle apartheid, economic sanctions against South Africa were "inevitable." It said the Community must prepare for that

..../

Washington office: 2100 M Street NW Washington DC 20037 / telephone (202) 862-9500 / telex: 89-539 EURCOM
EUROPEAN COMMUNITY INFORMATION SERVICE
New York office: 1 Dag Hammarskjöld Plaza, 245 E 47th Street New York, New York 10017 / telephone (212) 371-3804

eventuality, and declared that it was ready "here and now" to draw up appropriate proposals.

The E.C. so far has been divided on the issue of economic sanctions, with some member states pushing for them, and others opposing them as ineffective. Two E.C. member states, France and Denmark, have on their own banned new investment in South Africa.

The European Parliament, which has over the years adopted many resolutions condemning apartheid, on April 18 urged the Community to sever all economic, financial, cultural and military ties with South Africa.

The Parliament condemned "the escalation in the violence and repression" carried out against the South African black population, including police killings of unarmed citizens and arrests of religious and civil rights leaders. It called on Community member states to develop a consistent policy toward South Africa, and to take joint actions with the United States and Scandinavian governments when possible.

CODE OF CONDUCT

E.C. Foreign Ministers in 1977 adopted a code of conduct for Community companies with subsidiaries, branches or representation in South Africa. It calls on the companies to treat their employees equally and to do everything possible to support trade unions for black South Africans. The voluntary code also asks businesses to provide:

—A minimum wage at least 50 percent above the amount required to satisfy the basic needs of a family;
--Equal pay for equal work, and training programs to help black Africans to move out of inferior jobs;
—Fringe benefits, including housing, health services, pensions, educational funds and unemployment insurance;
—Desegregated workplaces.

The most recent E.C. analysis of the code's implementation, covering the period July 1981 to June 1983, found that trade union membership in South Africa had increased rapidly and that Community companies had become more willing to cooperate with black unions.

The analysis was based on reports from 224 companies from all E.C. member states except Ireland and Luxembourg, representing almost 142,000 employees. More than half of the companies (139) were from the United Kingdom, with the Federal Republic of Germany having the second greatest number (51).

The study found that most employees were paid above the code's recommended minimum level, although a small percentage received less than poverty-level wages. Almost all companies reported providing fringe benefits and a majority said they had partially or completely desegregated the workplace. The analysis found a need for better training programs for blacks, as reflected by a shortage of skilled workers.

..../

In their July 22 statement, Community Foreign Ministers said the code of conduct has "proved to be a useful instrument for the emancipation of black workers in South Africa," but it should be strengthened. The European Parliament has also called for a stronger code.

STATEMENTS BY THE FOREIGN MINISTERS OF THE TEN ON THE SITUATION IN SOUTH AFRICA AND SOUTHERN AFRICA

July 31, 1985

The Ministers of Foreign Affairs of the European Community together with the Ministers of Spain and Portugal met on July 31, 1985, in order to examine the serious developments of the situation in South Africa. They took note of the debate and of the resolution of the Security Council.

They confirmed their common attitude as it is expressed in their declaration of July 22, 1985, and in particular their strong condemnation of the proclamation of a state of emergency in important parts of that country.

They also condemned the refusal of the South African government to have talks with Bishop Tutu. They called upon that government to open a dialogue with all the representatives of the black majority, including those who are in prison and whose liberation they have requested on July 22.

The Ministers exchanged information about the measures taken or envisaged with respect to South Africa.

They noted that all member states apply certain restrictions in their relations with South Africa.

The Ministers asked the Political Committee to establish an inventory of these measures, and to hold a full discussion of policies which the Ten might pursue and of measures to take in order to contribute to the abolition of apartheid.

They decided to summon their Ambassadors to come for consultations to attend this meeting.

The Ministers asked the Political Committee to report to them at their next meeting.

July 22, 1985

The Ten Foreign Ministers express their profound concern over the continuing human suffering caused in South Africa by the apartheid system which they strongly condemn.

They deplore all acts of violence. In South Africa, violence affects the black population in particular, and the Ten call for its renunciation by all concerned.

..../

The most recent action by the South African authorities in declaring a State of Emergency in certain areas of the country marks a sharp deterioration in the situation. It must be brought to an end and all those held under its provisions released.

The Ten urge the Government in Pretoria to embark with determination on a policy involving specific actions leading to the abolition of the apartheid system and the implementation of the rightful political and civil rights of the black population. In the absence of any significant progress within a reasonable period of time, the Ten reserve the right to reconsider their attitude.

In their view the first requirement is the rapid opening of a dialogue between the present South African Government and the genuine representatives of the non-white community, with the declared aim inter alia of giving proper representation to the black community at the national level.

To improve the prospects for such a dialogue, the Ten believe that the South African Government should:

--release immediately and unconditionally Mr. Nelson Mandela;
--end detention without trial;
--abandon the practice of forced removals;
--remove discriminatory legislation including the pass laws and the group areas act.

CODE OF CONDUCT FOR EUROPEAN COMMUNITY COMPANIES WITH SUBSIDIARIES, BRANCHES OR REPRESENTATION IN SOUTH AFRICA

1. Relations within the undertaking.

a) Companies should ensure that all their employees irrespective of racial or other distinction are allowed to choose freely and without any hindrance the type of organization to represent them.

b) Employers should regularly and unequivocally inform their employees that consultations and collective bargaining with organizations which are freely elected and representative of employees are part of company policy.

c) Should black African employees decide that their representative body should be in the form of a trade union, the company should accept this decision. Trade unions for black Africans are not illegal, and companies are free to recognize them, and to negotiate and conclude agreements with them.

d) Consequently, the companies should allow collective bargaining with organizations freely chosen by the workers to develop in accordance with internationally accepted principles.

..../

e) Employers should do everything possible to ensure that black African employees are free to form or to join a trade union. Steps should be taken in particular to permit trade union officials to explain to employees the aims of trade unions and the advantages of membership, to distribute trade union documentation and display trade union notices on the company's premises, to have reasonable time off to carry out their union duties without loss of pay and to organize.

f) Where works or liaison committees operate, trade union officials should have representative status on these bodies if employees so wish. However, the existence of these types of committee should not prejudice the development or status of trade unions or of their representatives.

2. Migrant Labor

a) The system of migrant labor is, in South Africa, an instrument of the policy of apartheid which has the effect of preventing the individual from seeking and obtaining a job of his choice; it also causes grave social and family problems.

b) Employers have the social responsibility to contribute towards ensuring freedom of movement for black African workers and their families.

c) In the meantime employers should make it their concern to alleviate as much as possible the effects of the existing system.

3. Pay

Companies should assume a special responsibility as regards the pay and conditions of employment of their black African employees. They should formulate specific policies aimed at improving their terms of employment. Pay based on the absolute minimum necessary for a family to survive cannot be considered as being sufficient. The minimum wage should initially exceed by at least 50 percent the minimum level required to satisfy the basic needs of an employee and his family.

4. Wage structure and black African advancement.

a) The principle of "equal pay for equal work" means that all jobs should be open to any worker who possesses suitable qualifications, irrespective of racial or other distinction, and that wages should be based on a qualitative job evaluation.

b) The same pay scales should be applied to the same work. The adoption of the principle of equal pay would, however, be meaningless if black African employees were kept in inferior jobs. Employers should therefore draw up an appropriate range of training schemes of a suitable standard to provide training for their black African employees, and should reduce their dependence on immigrant white labor.

..../

5. Fringe benefits.

a) In view of their social responsibilities, undertakings should concern themselves with the living conditions of their employees and families.

b) For this purpose company funds could be set aside for use

- --in the housing of black African personnel and their families; in transport from place of residence to place of work and back;
- --in providing leisure and health service facilities;
- --in providing their employees with assistance in problems they encounter with the authorities over their movement from one place to another, their choice of residence and their employment;
- --in pension matters;
- --in education matters;
- --in improving medical services, in adopting programs of insurance against industrial accidents and unemployment, and in other measures of social welfare.

6. Desegregation of places of work.

In so far as it lies within their own competence, employers should do everything possible to abolish any practice of segregation, notably at the workplace and in canteens, sports activities, education and training. They should also ensure equal working conditions for all their staff.

7. Reports on the implementation of the code of conduct.

a) Parent companies to which this code is addressed should publish each year a detailed and fully documented report on the progress made in applying this code.

b) The number of black Africans employed in the undertaking should be specified in the report, and progress in each of the six areas indicated above should be fully covered.

c) The governments of the Nine will review annually progress made in implementing this code. To this end a copy of each company's report should be submitted to their national government.

URBAN FOUNDATION

Western Cape Regional Newsletter

Some Project Highlights of 1984 and 1985

THE URBAN FOUNDATION

Statement of goals

1 To improve the quality of life of South African communities, particularly in an urban context; to this end to promote peaceful structural change in relation to fundamental aspects of community needs such as:
housing and associated rights and facilities,
employment, career and business opportunities,
education and training, and
equal opportunities in respect of these;

2 to act through a participatory process between the community and the private sector (with co-operation from the public sector);

3 and thereby to contribute to the establishment of a society founded upon justice and the explicit recognition of the dignity and freedom of individuals.

Values on which our efforts are based

1 freedom of choice;

2 individual self-reliance and self-sufficiency;

3 individual security, based on an accepted structure of law and order and equality before the law;

4 the free enterprise economic system; and

5 the elimination of discrimination on the basis of race, and other irrational criteria.

Cover picture - Teachers on the CARE Science Kit course - by Nico Muller of Daily Dispatch.

The Foundation's objective – to improve the quality of life of South African communities and in so doing to promote peaceful structural reform through development in the areas of housing, education and training and access to work opportunities – is pursued through two supporting and complementry strategies.

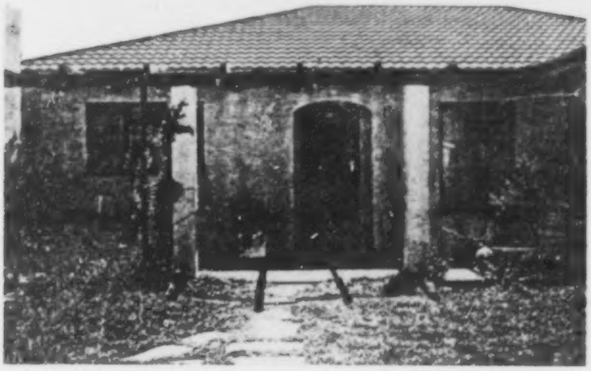
These are: negotiations, significantly with the authorities but also extensively with the communities and the private sector, and innovative project activity. Both strategies are supported by research and the dissemination of reliable and objective information.

Through this approach the Foundation aims to achieve reform in the legal structures which govern the lives of all communities and also reforms in the provision of finance, customs and attitudes which are necessary to achieve the goals for which the Foundation stands and support the values in which we believe.

The projects included in this Regional Review represent the visible or physical side of our activity. In most cases the projects have been supportive of negotiation covering a wide range of matters including inter alia access to security of tenure for Black residents in the Western Cape, new approaches to and financial mechanisms for self-help housing, pre-school standards and so on. In all projects the involvement of the community has been sought so that projects are appropriate to the needs of the people they serve.

THE UTILITY COMPANIES

Fully completed houses at Malunga Park



The Urban Foundation has established a number of housing utility companies throughout the country. The reason for establishing these companies is to put into practice in scale terms the principles and techniques the Foundation has developed in pilot projects in the fields of self-help housing, low income housing in general and community involvement in the housing process. In the initial phases of the development of these companies the Foundation provides Board and Management expertise with a view to the companies becoming fully independent.

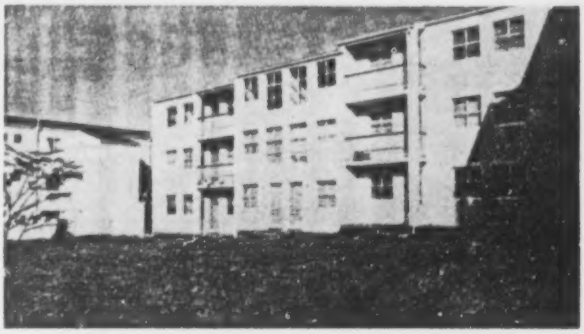
In the Western Cape, the Foundation in partnership with representatives from the community established the Uluntu Utility Company and negotiated for a 60 year leasehold system for its developments. At that time this was the only access to any form of tenure other than for monthly tenancy available to Black persons in the Western Cape.

More recently the Foundation signed a management agreement with the Peninsula Community Association, a housing utility company which had previously undertaken a project in Belhar.

MALUNGA PARK – A SUCCESS STORY COMPLETED

The Uluntu Utility Company's last 6 of the 156 houses at Mulunga Park, Guguletu are in the final stages of completion.

Two blocks of flats have also been developed together with a 3 storey block that will house 55 UCT students. The blocks of flats will be let to individual tenants. With the granting of 99 year leasehold, Malunga Park which has been fully surveyed could be made available for sale to occupants at an early date.



BELHAR HOUSING PROJECT

In 1983 PCA started negotiations with the Divisional Council of the Cape for the purchase of a tract of land in Belhar. In October 1984 construction of Phase 1 was started. The first 28 houses comprising Phase 1 have recently been completed and are all occupied. House prices ranged from R30 000 to R40 000. The first occupants are pleased not only with the size of the accommodation provided but also with the aesthetics of the houses and the general environment. In addition to the first 28 houses a further 200 houses will be developed by PCA in this section of Belhar over the next year. In terms of design and costs these houses will be largely similar to the houses built in Phase 1. Phases 2 and 3 are under construction.

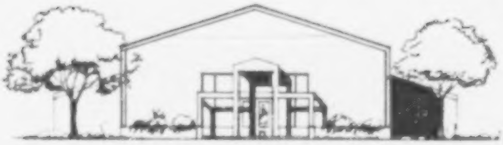
Plot sizes average 240 sq metres and designs have been rationalised so that vehicles can be accommodated on site and still have adequate outdoor living space. A broad range of house types is to be provided with floor areas ranging from 60 sq metres to 95 sq metres. Most of the houses will have two or three bedrooms with a limited number having four bedrooms. Two bedroomed houses have been designed and sited so that they can be easily expanded. There are eleven different house types that will be used in the entire project which will avoid the monotony of many developments. In addition to free standing dwellings, there are also semi-detached units and townhouses.

The development costs will be covered by an Urban Foundation loan to PCA. Building Societies have also agreed to provide mortgage funds for the houses on condition that participants meet with their lending requirements. Where purchasers earn under R800 per month, PCA will apply for 90% loans from the Department of Local Government, Housing and Agriculture. Many employers have already assisted and expressed their willingness to assist in the housing of a number of purchasers.

STEENBERG SELF-HELP PROJECT

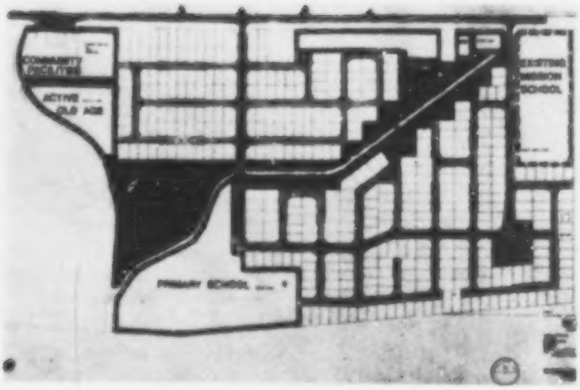
The Steenberg housing scheme is the Western Cape Urban Foundation's first large self-help project and will be implemented by the PCA. The project provided the Urban Foundation with an excellent opportunity to demonstrate some important housing policy aspects which have not been given sufficient attention, particularly in the Cape Town Metropolitan area, these include:-

- the effectiveness of options like self-help housing and incremental approaches such as shell housing;
- ensuring comprehensively planned living environments are developed;
- greater focus on social planning so that the community develops a sense of self reliance;
- creating opportunities for employment via the housing process.

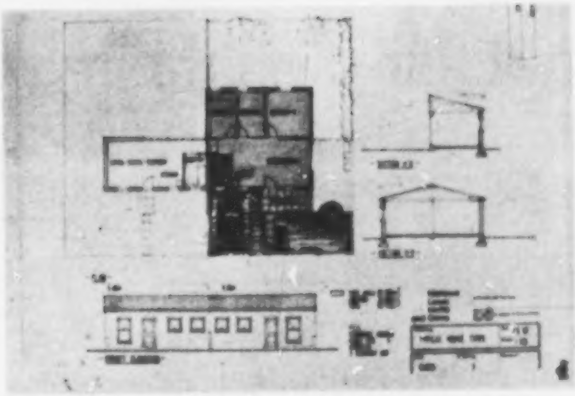


The Community Centre. This building will serve as the building materials store and site offices for the duration of the self-help scheme. On completion of the project it will be altered to a multi-purpose community centre.

An analysis of people on the Council waiting list in the Steenberg area enabled Urban Foundation staff to understand more clearly the needs and potential of the project participants. People who are on the Council's waiting list and living in the Steenberg area have been invited in groups to community meetings. At these meetings the principles of self-help have been fully explained particularly in relationship to the proposed Steenberg project. People have had an opportunity to ask questions and provide suggestions. As a result it is anticipated that there will be a high degree of mutual co-operation among participants which will extend beyond the development of their own homes to the development and maintenance of the common spaces.


COMMUNITY FACILITIES
ACTIVE
OLD AGE
EXISTING MISSION SCHOOL
PRIMARY SCHOOL

Site layout plan of 391 plots available. An interesting design feature is that many of the roads will serve a dual function - they will be conduits for vehicles but will be narrowed down to serve as play areas and general community space.



Careful attention has been given to house designs. A set of house types which are cost-effective and lend themselves readily to self-build have been specially designed for this project and ensure that people's needs, which were identified in the survey, are met.

TEACHER DEVELOPMENT

Teachers enjoy hands-on experience during an in-service science course.

One of the most serious problems in Black and 'Coloured' education is the lack of qualified teachers. The Urban Foundation research has shown that underqualified teachers for the various population groups as a percentage of the total are:-

Whites	— 3,36%
Asians	— 19,7%
Coloureds	— 66,14%
Blacks	— 85,0%

A matric certificate plus 3 years is the minimum teacher qualification. The Western Cape Urban Foundation is supporting two projects aimed at enabling teachers to improve their formal qualifications. In addition a number of teacher enrichment programmes has been sponsored in conjunction with teacher groups.

TEACHER OPPORTUNITY PROGRAMME – TOPS

Teachers eager to improve their qualifications.

Prof Cecil Leonard, Chairman of TOPS states, "the unique feature about TOPS is that it goes beyond mere academic upgrading and also concerns itself with long term professional and personal development of the teacher."

TOPS now have five school-based centres in Mitchells Plain, Elsies River, Atlantis, Langa and Paarl with a total enrolment of 400. In 1984, 541 subject entries were made and 46% of these were successfully completed. Methodology and school management components are included to improve the total competence of the teacher.

THE TEACHERS' RESOURCES CENTRE

The Teachers' Resources Centre was formally established during the year after a two year pilot project run by the Foundation at the Uluntu Centre, Guguletu. The Centre is a voluntary association governed by a Board of Trustees controlled by the Peninsula African Teachers Association. The Foundation has agreed to sponsor the core activities of the Centre for an initial 3 year period.

The Centre has grown from a need expressed by teachers to improve their capabilities both academically and professionally.

The objectives of the Centre are:-

- to set up teacher subject groups providing talks, workshops and demonstrations;
- to obtain audio visual aids and to promote their use through a lending system;
- to develop a library of reference books;
- to gain sponsorship for the infrastructure and manpower requirements of the centre.

The Director of the Centre, Mr Vuyani Gobodo, has been fortunate to be invited to centres in the UK and USA this year and is certain to return with new ideas and experience which will be a valuable contribution to the project.

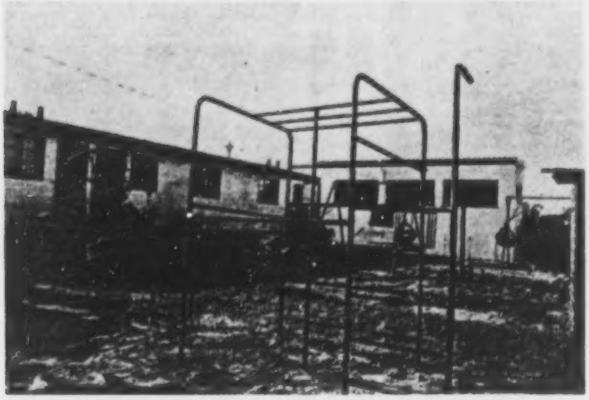
The lecture hall at the Teachers' Resources Centre provides a much needed facility for further adult education.

SAVIO ADULT EDUCATION CENTRE

More than 350 teachers have obtained matric certificates at Savio over the past 7 years and more and more teachers are now studying to upgrade their qualifications and skills. To improve the study facilities at the Centre, a library and media centre have been established funded by the Foundation's Education Trust and the American Centre. Teachers are now able to use video equipment in the teaching of Biology, Science and English and soon computer literacy and programming will be introduced.

LECTURE
ROOMS

PRE-SCHOOL PROGRAMMES



The Nondzame Educare Centre caters for ninety children. A grant from the Urban Foundation facilitated the upgrading and extension of the centre to a standard which qualified it for government subsidy.

The de Lange Report and other recent recommendations of the Science Committe of the President's Council emphasize the importance of pre-school education and school readiness programmes especially in communities where economics dictate the need for both parents to work. The Urban Foundation has responded to this challenge in conjunction with community groups by upgrading existing buildings which are potentially suitable for housing pre-schools and educare centres.

PRE-SCHOOL MANAGEMENT TRAINING PROGRAMME

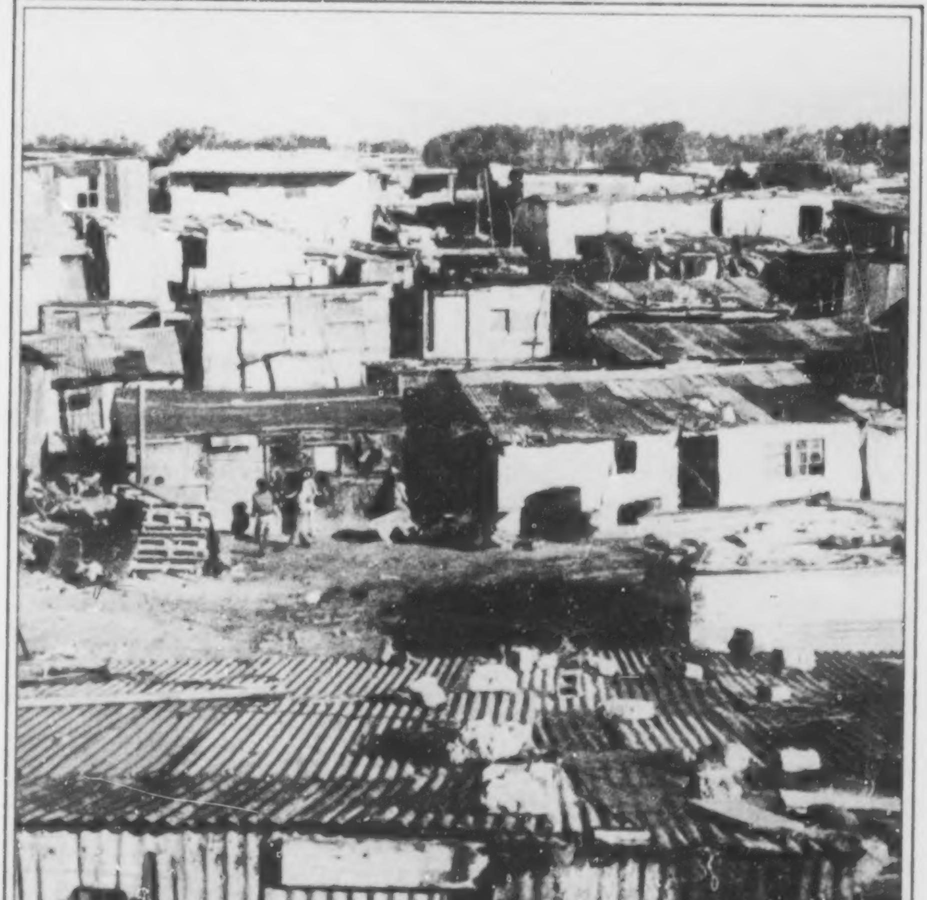
Children busy with creative activities at the Uluntu Pre-School.

Pre-schooling is at this stage still largely being controlled by community groups. Research by the Urban Foundation and Grassroots Education Trust has shown the essential need for community training in establishing and operating a pre-school programme.

The Foundation has agreed to support such a management training programme offered by Grassroots with a grant of R6 600.

The workshops held in 1984 proved to be very successful and thus encouraged the Foundation's plans to support a further 18 for 1985 which will focus on administrative training and parent/community involvement in pre-schools.

FOUNDATION FORUM



The Urban Foundation
Vol 2 No 2 1986

FOUNDATION
F①RUM

Crossroads — a decade in perspective

Crossroads came into being in February 1975 when the Cape Divisional Council gathered families from a number of squatter settlements scattered around the fringes of greater Cape Town and allowed them to erect shacks among the sanddunes on a site adjoining the township Nyanga. On 29 June 1376 it was proclaimed an emergency camp. The number of shacks was officially limited to 3 000 and basic services were provided.

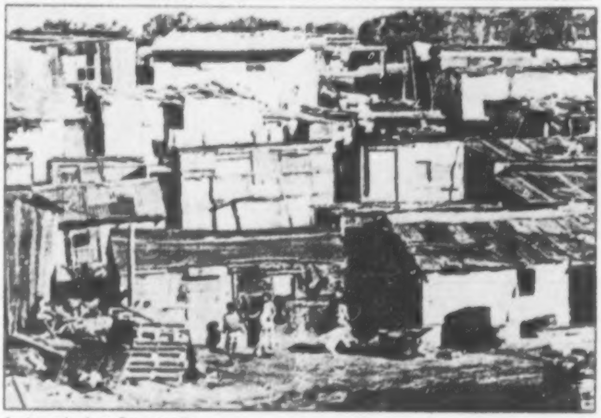
1977 marked the beginning of The Urban Foundation's involvement in Crossroads. Together with the Urban Problems Research Unit and Divisional Council we assisted residents with the construction of Noxolo Community Centre.

The Noxolo school, a self-help project was supported by an Urban Foundation grant of R15 000 and our continued support over the years has resulted in it more than doubling in size.

The demolition of shacks in Modderdam, Werkgenot and Unibel squatter camps in 1977 led to fear that Crossroads too would be bulldozed. Parliament then announced this would happen by the end of 1978.

Against the background of mounting tension and adverse publicity the Foundation, with other agencies, played an "honest broker" role between the community and the Government which led to Dr Piet Koornhof, then Minister of Plural Relations, meeting the Crossroads Committee. The "Koornhof Agreement" made provision for the development of a new township between Nyanga and Guguletu for people who resided in Crossroads prior to December 1978 and who met the following criteria:-

- qualified in terms of the Urban Areas Act under Sections 10 1(a) or (b);
- were contract workers and their families;
- were craftsmen or those rendering an informal service to the community;
- were persons who by reason of having been uprooted or through circumstances deserve special consideration.



A closer look at Crossroads.

A survey to determine who would qualify was not completed and a split in the executive committee of Crossroads in 1981 led to violent clashes between factions living there.

The Government intended spending nearly R28-million on housing for squatters in the New Crossroads township. Phase I is complete, consisting of 1 731 houses. Phase II has not been built. Plans for this phase were frozen when it was decided that all people living in the existing townships would move to Khayelitsha. The ground for this phase (now known as KTC squatter camp) has been progressively occupied since January 1984 by certain factions from Crossroads and others unable to find formal housing in the townships.

In 1980-81 The Urban Foundation continued its squatter emergency upgrade project by a R10 000 grant for pipes and taps and by providing prefabricated structures for a clinic and a pre-school. 1982-84 was a time of sporadic unrest and continual uncertainty about the fate of Crossroads. During this period, The Urban Foundation assisted with the erection of classrooms, provision of taps and toilets and was involved continuously in negotiations between the community and the government over the future of the area. Proposal were also submitted by the Foundation to Government for the upgrading of Old Crossroads and the development of the KTC site.

Government Policy

The unrest in Crossroads in February this year was the outcome of fears caused by rumours of an imminent forced removal to Khayelitsha. Shortly after this the Government announced its approval of the upgrading of Crossroads. Between a quarter and a third of the residents would have to move to reduce the population density. Dr Gerrit Viljoen, Minister of Co-operation and Development, also stated his intention to meet representatives of the different squatter groups in the area "in order to seek their co-operation for a programme of urban renewal and improvement of their quality of life."

In reaction to the Minister's statement Mr Jan Steyn said that "the Foundation has always opposed forced relocation as a solution, has urged upgrading as an alternative, and has submitted proposals to this effect as the most appropriate manner of resolving the problem." The Foundation also has the support of commerce and industry in indicating its willingness to make both manpower and financial resources available.

(cont. on page 2)

Crossroads

(cont. from page 1)

Current State

1984-5 has seen a significant increase in the population of Crossroads — from an estimated 50 000 to an estimated 125 000. The density in Crossroads could be as high as 1 800 persons per hectare compared to the gross intended density of Khayelitsha planned to be about 200 people per hectare.

There are about 12 community leaders with constituencies varying from 50 000 to 1 000 supporters.

In April this year Mr Timo Bezuidenhout, Chief Commissioner of the Western Cape, negotiated with the leaders of groups who had moved into Crossroads in the last two or three years offering them an 18 month temporary permit to remain in the Western Cape if they moved to Site C in Khayelitsha — a site and service scheme of 6 800 sites, including toilet and tap facilities, two primary schools, a clinic, administrative offices, access roads and high mast lighting.

It is difficult to provide reasonable statistics relating to Crossroads and KTC, but it appears that not more than 30 percent of the population of Old Crossroads has agreed to move. The Development Board figures at the end of April show some 830 structures had been demolished with 1 840 families moved to Site C.

Negotiations regarding KTC have not progressed to the stage where any formal agreements have been reached.

Security is an essential component of any housing upgrade project and in South Africa's Black community this is seen as having legal rights in terms of section 10 of the Urban Areas Consolidation Act. The success of an upgrade programme will depend on agreement between the communities and the Government on matters like legal status, ground tenure and the way to handle people who may be required to move.

Granting legal status to people living in Old Crossroads by way of special dispensation will make it extremely difficult to reduce the population density in the area. Therefore any legal status granted should be seen as part of a positive urbanisation strategy and made available to all.

Upgrading is essentially a long term process with a heavy emphasis on community involvement. Time will have to be spent building community understanding of the process, clarifying roles and creating a climate of trust.

Protea North: 20 000 will be accommodated

Protea North, the largest private sector housing develoment to have been undertaken so far in any black urban area in South Africa, was officially opened by Mr Jan Steyn, Chief Executive of the Urban Foundation, in May.

"Protea North will constitute a unique opportunity demonstrating the potential of private ownership in laying a sound foundation for upwardly mobile communities," Mr Steyn told the 500 who attended the opening at Protea North's showhouse area in Soweto.

Protea North, located on the south west boundary of Soweto, is being developed by the Family Housing Association (FHA) on behalf of The Urban Foundation, the Soweto Council and the West Rand Development Board.

About 3 300 families, or 20 000 people, will be accommodated by the development which will involve about R180-million in home loans produced by the private sector. It provides for 1 900 serviced residential sites available to employers and developers who, in turn, will construct houses and sell these to Soweto families on the basis of 99-year leasehold.

A further 600 sites are being sold direct to Soweto residents. Sales started in April and more than 70 stands have been sold to date.

Mr Steyn pointed out that Protea North was a "fast track" development, taking only 18 months, compared with the normal five to eight years, to obtain township establishment.

It also piloted a number of principles fundamental to the reformation of housing policy for black people in South Africa. Among these principles were:

- Large-scale private sector township development in black urban areas.
- Access to serviced residential land for the full spectrum of home builders and so provide a wide range of highly competitive housing options.
- The establishment of a one-stop sales service where leasehold procedures and plans approvals would be handled at Protea North.
- The creation of a large number of local jobs and business opportunities.

The project, Mr Steyn said, illustrated in concrete terms the fruits of joint public and private sector action in the housing field.

This co-operation was reflected by Councillor Edward Kunene, Mayor of Soweto, who said the Soweto Council was committed to involving the private sector in the provision of housing in Soweto on an ever-increasing scale.

Mr Carel Venter, vice chairman of the West Rand Development Board, observed that the Board had been able to put into practice its serious commitment to involve the private sector in providing badly-needed housing in Soweto.

The flags are flying for the official opening of Protea North in Soweto, the country's largest private enterprise housing project in a black urban area. Beyond the marquee are some of the show houses which generated great interest among the 500 who attended the ceremony on May 21.

FOUNDATION
F③RUM

CEP grows with Urban Foundation boost

The CEP offers adult education in the workplace.

The Continuing Education Programme, now at the end of its first year of Urban Foundation sponsorship, can report considerable success. Six new centres started in 1984 offering adult education in the workplace at levels from literacy to Std 10 and NTC Part III.

The CEP is a co-operative venture in which groups of companies in the same area co-operate to provide education for their employees. Each company participating in a CEP contributes an agreed amount (usually about R3 000) to their own CEP fund, used mostly to pay teachers. Each independent CEP is managed by a committee of representatives from participating companies. Classes in a variety of subjects and courses are held in training rooms, canteens or board rooms with different companies hosting different classes to share the demand on their facilities.

Classes usually take place between 4 and 6 p.m., with employees and employers each contributing an hour of their time. Classes are open to all races and participation is voluntary.

Each CEP centre can ensure that the same high quality of education is offered to all its students, regardless of which department's examinations they write. Well qualified, experienced teachers can be recruited locally and supported and monitored by the CEP committee. Supplementary learning materials can be provided and classes at intermediate levels can be scheduled to bring students up to the entry levels required for various courses. Students can discuss their study and attendance problems with teachers and company representatives.

The history of the CEP shows that it is a viable, proven scheme. The first CEP centre was started in Isando in 1978 with three participating companies. This centre now has 16 participating companies and 115 students. The other centres were started in Halfway House and Pretoria East at about the same time.

At the end of 1983 The Urban Foundation decided to sponsor the national extension of the programme for 2 years with 2 objectives:

i) to promote the CEP concept and help companies to establish CEP centres in industrial areas throughout the country
ii) to research the educational needs of adults — in specific educational areas with the aim of designing new syllabuses relevant to the needs and interests of adults.

During 1984 new CEP centres began operating in Port Elizabeth, Wadeville, Pinetown, Spartan and Pietersburg and centres are likely to start soon in Richards Bay, Durban, Bloemfontein and Industria. There is also growing interest in the CEP in Brits, Springs, Benoni, Clayville, Benrose and Central Johannesburg.

With help and advice from the CEP's central co-ordinators, some large companies have established their own similar schemes and adapted them to their particular needs.

CEP centres have been independently innovative and new ideas are pooled and discussed with representatives from all CEPs.

Attitudes to the CEP of students, teachers, companies and unions are encouraging despite recent disturbances and retrenchments. The network of CEP centres is expected to grow further in 1985.

This growing country-wide network has the potential to become an effective lobby for bringing problems and possibilities in worker education to the attention of commerce and industry and of the authorities.

Education report — a summary

In 1983 The Urban Foundation felt it necessary to undertake extensive research that would provide the data base for use in the planning of their on-going policy in education. Mrs Jane Hofmeyr (B.A. (Hons) M.Ed.) was approached early in 1984 to research and compile *The Urban Foundation Education Report* **which she completed in August of that year.**

The research which produced this report was undertaken to survey the "status quo" and anticipate future trends in a number of key areas of South African education. Extensive positive input has been tabled in the report indicating how problems in education can be solved to the benefit of all South Africans. A very brief summary of the findings follows:

1. Centralised control, fragmented administration and bureaucratic power characterise South African education.
2. There is an absence of a national approach to education problems.
3. The central problem of formal education is the supply, quality and morale of the teaching force.
4. Evaluation and certification are critical issues for the future.
5. For the foreseeable future, education in the rural areas and national states will continue to lag behind education in the rest of South Africa.
6. Universities and technikons will become more racially integrated, with student unrest and racial tensions as a continuing feature.
7. A comprehensive system of pre-schooling for all ages before the turn of the century is unattainable.
8. In the short term technical education will not become a panacea for educational and economic problems.

(cont. on page 4)

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Management training for headmasters

Headmasters and trainers with Urban Foundation co-ordinator, Mr Linda Ntombela, (extreme right).

The success of a school depends substantially upon the principal's ability as a manager and administrator. In the ordinary course of events, however, principals, especially in black schools, receive no formal training in these vital areas and education suffers accordingly.

The UF in Natal discerned the need, discussed it with officials and then responded to requests for a series of management training courses for heads of schools in KwaZulu. The Regional Board of the UF approved an allocation in 1984 for the development of a course and the testing of its efficiency. The main objectives of the course were to create among the educators an awareness of need for skills training in management and leadership and to motivate them to participate in the process of training, to provide educators with basic leadership skills which will enable them to perform their duties more effectively, to give educators the opportunity to analyse their own strengths and weaknesses, and to contribute towards the professional growth of inspectors, heads of schools and their staff.

In 1984 the UF instituted courses in the following KwaZulu circuits: Kwa Mashu – 60 headmasters, Madadeni – 22 headmasters and Edendale – 30 headmasters. Each training workshop was followed by an evaluation of the course content and organisation.

In November 1984 the UF invited experts in the field of education management to review the work and assist in planning a revised programme for 1985. As a result a new approach was implemented at Umlazi in February 1985, where initially 10 senior educators were trained in order to develop their own training team.

During the same period the UF negotiated with the Department of Education and Training to provide a two day course in management motivation and educational leadership for 60 of its senior educators. This was conducted in March this year.

The ultimate objective of the exercise is to demonstrate to the education authorities, not only the need for leadership training, but practical and effective methods of implementing training from their own resources on an ongoing basis.

(cont. from page 3)

9. There is a general lack of management skills in formal and non-formal education.
10. Non-formal education is a compelling necessity in South Africa but it lacks a national strategy/framework.
11. Education must be understood within the context of the social, economic and political structures of South Africa.
12. Government expenditure on education will increase but the main quantity and quality problems will not be solved by the year 2000.
13. There is a high degree of alienation from the system by main "users" – Black youth.
14. South African education is conservative and resistant to change.
15. The private sector role in education should be aimed at fundamental reform with more informed, innovative, co-ordinated and targeted initiatives.

A co-ordinated approach to pre-school education

Soon after its inception in 1978 the Eastern Cape Region of The Urban Foundation (ECUF) entered the pre-school field in a small way with a project in Port Elizabeth and one at Makanaskop in Grahamstown. Yellowed cuttings of the day testify to the determination of the townfolk in getting the St. Anthony's Play Centre established. Today the school is a well-run, actively supported Educare Centre, proving good dividends for U.F. investment!

Serious involvement, however, followed in 1979 when the Early Childhood Education committee of the Cape African Teachers' Union approached the ECUF, requesting assistance regarding the pre-school situation in Port Elizabeth Black townships. A pre-school pilot project to determine the general and specific needs in the Black community was carried out by Dr Haarhoff for ECUF in that same year, followed by a similar study for Coloured and Indian communities in 1980. The lack of facilities, trained teachers and in-service training programmes in these three groups was brought to light with urgent recommendations to improve the situation.

ECUF acted on these recommendations with alacrity, grants and loans being dispensed to worthy projects as far afield as George, Graaff Reinet and East London. Some were small and seemingly insignificant – like a consignment of blackboards – yet fulfilling an urgent need. Others, like the establishment of the Kroonvale Coloured Pre-school in Graaff Reinet, broke new ground by being the first of its kind in the area. With a hefty investment in the Conville Coloured Pre-school in George, the Grahamstown Coloured Creche, and the Kate van der Merwe Pre-school in Humansdorp, the ECUF's wide-ranging involvement in the pre-school was firmly established.

Word spread. The Port Elizabeth communities of Schauderville, Zwide and Walmer received assistance at their pre-schools in the form of upgraded buildings and improved surroundings.

The need for in-service training of teachers was apparent from the start and expanded programme activities were embarked upon.

In 1980 the KwaNobuhle Pre-school for Blacks – in Uitenhage – was built with some assistance from ECUF. Our greatest input, however, was comprehensive training which enabled the school to qualify for the first Department of Education subsidy in the Eastern Cape.

(cont. on page 5)

FOUNDATION
F⑤RUM

Some major achievements of the past financial year

The achievements of the Foundation in the past year touch South African society on almost all levels and across a broad spectrum. They are the result of work and initiatives in both innovative project activities and negotiations for reform of policies and structures in society.

Achievements most notable in the area of housing include:

* Three new housing utility companies started operations – Innova near Durban, the Family Housing Association in the Transvaal and Blomanda in Bloemfontein.

* Twenty new houses are started weekly in the Inanda incremental self-help housing project.

* Successful completion of the dry-stack building technique pilot project and official approval for its implementation on scale.

* The Peninsula Housing Association, a utility company launched two housing schemes in the Coloured community.

* A survey on attitudes to different forms of higher density housing was carried out in the local black community by the regional office in Bloemfontein.

In the field of education and training:

* The Funda Centre in Soweto completed its first year in operation successfully.

* The Junior Science Kit Project met an urgent need at very low cost.

* Teacher Opportunity Programmes (T.O.P.S.) and other projects aimed at improving the teaching abilities and formal qualifications of teachers.

* The launching of a project in the Eastern Cape to develop a pre-school model.

These projects were possible because of the Foundation's success in mobilising developmental finance both in South Africa and overseas, a total of more than R50-million and also in raising more than R10-million in donation income despite adverse economic conditions.

The Foundation's activities in negotiating for reform span a very wide spectrum as very few projects can be launched without successful negotiations on changes in customs, policies, procedures etc. Some of our negotiations which had an effect of direct national importance on Government policy follow:

* The Foundation has always believed in the necessity for freehold rights for urban blacks, and has made representation in this regard to Government. Earlier this year the State President announced that this is to be implemented.

* Scrapping of the Coloured Labour Preference Policy which applied in the Western Cape and the granting of 99-year leasehold rights to blacks in that area. Coupled to this is the decision to upgrade Crossroads, rather than demolish it.

* The Orderly Movement and Settlement of Black Persons Bill was shelved, and although the Urbanisation Bill is still unpublished the State President has committed the Government to steps "to promote orderly urbanisation and to eliminate negative and discriminatory aspects of influx control."

These are only some of the achievements of the Foundation mentioned, not to emphasise our success, but to provide an overview of the Foundation's endeavours to improve the quality of life in urban communities.

Pre-school education

(cont. from page 4)

Subsequently another seven local Black pre-schools have qualified for this subsidy on the strength of the ECUF's upgrading and training. In that same year Grahamstown was the beneficiary of our upgraded Red Cross Creche for Coloured children.

In the next year five Black Community Council Educare Centres were renovated, upgraded and supplied with in-service training for teacher-aids. These were followed by the take-over of Zizamele pre-school by ECUF. The facilities and equipment improved following a sizeable investment.

Simultaneously the need for in-service training increased and the University of Port Elizabeth, with financial assistance from ECUF, ran pre-school courses on three levels, Introductory, Intermediate and Advanced.

Funds have been budgeted for three years to supply in-service teacher training, with the ultimate purpose of identifying and testing a potentially replicable model of pre-school provision.

The ECUF has two major projects for the immediate future – the construction of a pre-school in Motherwell, a new Black residential area on the outskirts of Port Elizabeth and a self-help building at Tantyi in Grahamstown.

A full-time Educare adviser handles training, which has expanded to cover Black, White, Indian and Coloured groups, and encompasses the rural areas as well.

UF's new structure and constitution

Mr H F Oppenheimer, first President of the Foundation's Board of Governors.

The Urban Foundation's corporate and individual members will in future be embodied in and represented by a Board of Governors which also replaces the previous Board of Directors. Mr H F Oppenheimer is the first President of the Board of Governors.

The Managing Director of the Foundation, Dr Robin Lee, said that the Board of Governors was instituted with the objective of providing permanent representation for the Foundation's major constituencies and for its members.

"A new, but smaller Board of Directors has also been formed under the chairmanship of Mr J H Steyn, the former Chief Executive Officer of the Foundation. The new Board of Directors consists of a small number of senior executives in fulltime employ of the Foundation, one representative from each of the five regional boards, and not more than seven nominees from the Board of Governors.

The Board of Governors will meet once a year at the Annual General Meeting and will determine the broad principles and policies of the Foundation. The Board of Directors will meet every second month to attend more closely to the business of the Foundation.

All members of the previous Board of Directors have been appointed to the Board of Governors which will in time be expanded to ensure continued involvement of individuals and business and community representatives in the affairs of the Foundation.

"The new Board of Directors will ensure continuity of participation in decision making while also providing appropriate regional and sectional representation at top decision making level," Dr Lee said.

The Foundation has also streamlined its management structure by reducing the number of divisions at Head Office from five to three, and by directly incorporating the regional directors in a national management team.

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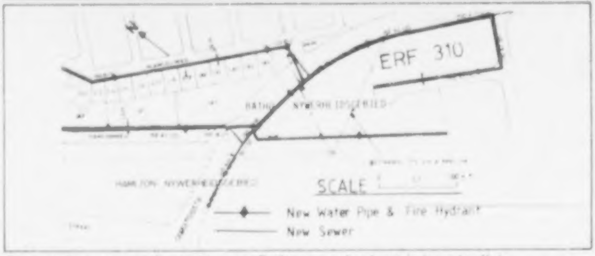
Ontwikkeling van self-help nywerheidspark

Die Projekkomitee van Batho Nywerheidspark (BNP) het op 30 April 1985 nog 'n belangrike mylpaal bereik in sy poging om aan die agterplaasnyweraars van Mangaung die geleentheid te gee om hul eie gedienste werkpersele te bekom. Die Stadsraad van Mangaung het die aansoek namens 12 gekeurde deelnemers aanvaar dat 'n gedeelte van 'n nywerheidserf onderverdeel word en deur middel van 'n 99-jaar huurpagtitel individueel aan dié aansoekers verkoop word.

Op 8 Augustus 1982 het mnr. Bethuel Ralikhomo, destydse voorsitter van die nywerheidskomitee van die Mangaungse Swart Kamer van Koophandel en Nywerheid, by die kantoor van dr. Andries Lategan, Die stedelike Stigting se streekdirekteur vir die Oranje-Vrystaat en Noord-Kaapland, kom aanklop om sy lede te help om werkplase te bekom waar ondernemers soos sweisers en duikkloppers deur onderdakse beskerming teen reën en wind hul nuttige werkstyd kan vermeerder.

As gevolg van hierdie versoek is die BNP Projekkomitee in Februarie 1984 saamgestel.

Hierdie komitee het die uitdaging aangepak om die behoeftes van die agterplaasondernemers om hul eie werkplase te besit te versoen met die beperkte kapitaal waaroor hul beskik, en die ekstra lopende uitgawes wat 'n sigbare onderneming in 'n erkende werkplaas sal moet dra, soos afbetalings op lening vir die bou van werkswinkels en aankoop van toerusting, munisipale heffings, inkomstebelasting en minimumlone.



Die installering van infrastruktuur in Batho nywerheidsgebied vorder fluks.

Die Projekkomitee het die ervaring van gevestigde nywerheidsparke op ander plekke in die land gekombineer met die tradisie van selfboubehuising in Mangaung om die koste van die oprigting van werkplase so laag as moontlik te hou. Die ondernemers wat nywerheidspersele bekom sal toegelaat word om oor 'n tydperk hul werkplase op te rig deur dit self te bou of mekaar onderling in diens te neem.

Dit word verwag dat die installering van infrastruktuur vir die nywerheidspersele wat in Februarie 1985 begin is teen die einde van Junie voltooi sal wees. Die Stadsraad is nou besig met die onderverdeling waarna die oprigting van werkplase sal kan begin.

Acceptance of black building industry — a key issue

In the past, discriminatory legislation prevented the evolution of qualified Black building artisans which stopped the emergence of an entrepreneural class of Black builders. This meant that Blacks were also excluded from meaningful participation in the increasing building activities in the township.

Recently labour legislation was relaxed allowing Black artisans to qualify as bricklayers, carpenters, etc. However, a lot more has still to be done to remove the plethora of industrial Council regulations.

Today, in the Eastern Cape, the Black building industry is beginning to thrive. With the financial, managerial and technical support of the Eastern Cape Region of The Urban Foundation (ECUF), and the academic backing of the Emthonjeni Training Centre, the East Cape Builders and Allied Contractors Association, formed by the Black builders, is geared to bring highly trained and skilled Black competitors into the house building market.

Implications for an industry frequently accused by home-builders of overpricing their services, are obvious: low geared and competitive Black contractors are introducing keener prices to benefit the home-owner.

Approaches to building societies, suppliers and the East Cape Development Board have yielded positive results. Over the past five months the ECDB awarded contracts totalling approximately R157 285 in the Motherwell development, generating and sustaining about 100 job opportunities during the same period. One Building Society has pledged to provide bond financing to any qualifying client of the member builders. These two developments form the cornerstone of the project: private and public sector recognition of the Black builder.

With the acute housing shortage in the area coupled with unacceptably high rates of unemployment, the Residential Development and Access to Work Opportunities are working very closely to stimulate entrepreneurship among the Black builders whilst facilitating the provision of shelter.

ECBACA
MOTHERWELL UPGRADE
WITH THE SUPPORT
of THE URBAN FOUNDATION

The black building industry is beginning to thrive in the Eastern Cape.

FOUNDATION
F⑦RUM

Sullivan responds to UF initiatives

"I want to support the Foundation, its work and in particular Mr Jan Steyn. I believe it is the most appropriate and the only credible organisation of its kind in South Africa that can effectively promote peaceful change in that country."

These words were said by the Rev. Leon Sullivan, originator of the Sullivan Code of Employment Practice, at an informal meeting with Foundation representatives in Philadelphia in May.

The Rev. Sullivan was commenting on The Urban Foundation's latest structural reform initiatives, and in particular its urbanisation programme. He stressed his belief that the key to the success of any urbanisation strategy is the total abolition of the influx control laws.

He is particularly impressed with the Foundation's methodology in using projects to demonstrate reform in a positive way and in the principle of initiating projects that will have a multiplier or replicable effect.

Some of the main objectives for the visit of Foundation members to the United States were:

- to establish The Urban Foundation US Inc., a corporation seeking IRS tax exempt status to raise funds in America,
- to appoint American directors for this corporation,
- to test opinion with a selected audience which included influential congressmen, senators, members of the administration and principals of a number of east coast universities. The UF's role as a change agent in South Africa was also discussed,
- and to address a selective number of potential donor companies including the American lending institutions.

Mr Jan Steyn also presented a paper on "The US Business Presence in South Africa" to a meeting of the United States Council for International Business.

These objectives were achieved, and as a bonus a number of corporations indicated they were willing to provide substantial financial support.

The full text of Rev Sullivan's statement on South Africa is available from The Urban Foundation. Contact Mr Rhys Watson at National Office, PO Box 1198, Johannesburg, 2000 or telephone (011) 833-1620.

Rev Leon Sullivan

Mr L H Wilking, (above), Managing Director, General Motors South Africa (Pty) Ltd, has announced a R1,6 million loan to The Urban Foundation to be devoted to self-help housing programmes in Port Elizabeth. The housing projects provide for the construction of 272 new houses and service improvements to 44 existing houses. It also includes a day care clinic and a creche for black children of pre-school age.

In addition a contribution of R100 000 by the General Motors Foundation has been provided to assist other Urban Foundation projects in the areas of education, housing and business development. This grant is the second instalment of a five-year R500 000 commitment by the General Motors Foundation to The Urban Foundation.

Mr Chris Ball, Managing Director of Barclays National Bank Limited.

Barclays National Bank Limited, in its desire to be seen as a responsible corporate citizen undertook in 1982 to make a strong gesture of commitment by donating the sum of R2-million spread over four years.

In associating itself with the aims and objectives of The Urban Foundation, the bank believes that it is helping to ensure an appropriate and acceptable reform process.

On a recent visit to the USA, a delegation from The Urban Foundation visited Burroughs Corporate Headquarters in Detroit.

Mr Robert F Holmes, Senior Vice President and President Worldwide Marketing, (above right), presents a cheque for the equivalent of $100 000 to Mr Jan Steyn, Chief Executive of The Urban Foundation for the Teacher Opportunity Programme (TOPS) run under the auspices of the Foundation.

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The American Chamber of Commerce in South Africa

Aims and objectives:

1. To foster and communicate the broad beneficial concept of US private enterprise.
2. To promote and develop trade and commerce between South Africa and the United States.
   To provide a forum on an organised continuing basis in which Members can discuss and identify common views regarding their trade and commercial interests.
3. To seek to minimise discriminatory or restrictive legislation both in the United States and South Africa which would impede the operations of these businesses, their people and the community at large.
4. To represent the Members to government, the business community, other similar organisations and the general public.
5. To maintain contact with the South African and United States Governments to ensure that the Chamber is at all times aware of the policy and thinking of these Governments on trade and commercial and related matters.
6. To collect, evaluate and disseminate among its Members, statistics and other information relating to any of its objectives.
7. To promote measures calculated to benefit and protect the interests of members in South Africa.
8. To encourage members to adopt and maintain the same high standards of business conduct and ethics in South Africa that they practise elsewhere in the world.
9. To encourage our Members to subscribe to recognised Codes of Employment Practice.
10. To encourage the development of employees of member organisations.
11. To promote local economic and social contributions for the benefit of South Africa.
12. To seek to uphold the dignity of all people of South Africa to enjoy and contribute to a free society.
13. To promote goodwill and co-operation between South Africa and the United States and the citizens thereof.

U.S.
Business Involvement
in
South Africa

Produced by:

THE AMERICAN CHAMBER OF COMMERCE IN SOUTH AFRICA

January 1984

PREFACE

AMERICAN companies operating in South Africa often find that the unique business, social and political conditions contradict accepted values and they are frequently called upon to answer for their presence. There is a strong belief among various sectors of American and South African society that American business presence in South Africa supports and even perpetuates the Government policy of apartheid. We believe this is accentuated by one-sided media publicity. We are often criticized for not responding to this by demonstrating what American companies are accomplishing individually and collectively in the areas of training and development, employment opportunities, benefits and community development. We believe the appropriate time has arrived for American business presence in South Africa to be stated in proper perspective which this publication by the American Chamber of Commerce in South Africa attempts to do.

This first edition covers a wide range of subjects which we hope will give the reader an understanding of not only what is being accomplished by American companies in South Africa but also a brief background on some of the environmental conditions, constraints and opportunities under which business is conducted. This is a broad and complex field which cannot be totally reviewed in so short a document but we hope it does convey the significant contribution made to the reform process by the American business community in South Africa.

I wish to acknowledge the valuable contribution made by all the members of the working committee who provided the input to this publication with a special word of appreciation to Mr Bill DeGenring who chaired the working committee.

We trust that this information will complement your understanding of the role played by American business presence in South Africa.

I. W. LEACH
President
American Chamber of Commerce in South Africa
1983/1984

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INTRODUCTION

QUESTIONS have been raised in the United States about the role and influence of the US corporate presence in South Africa.

We – the American Chamber of Commerce (AMCHAM) in South Africa, representing just under 300 companies – deem it appropriate to respond.

We know of no part of the world where American companies are doing more to promote equality and opportunity in the workplace than in South Africa.

Improving the lives, prospects and opportunities of South African blacks in our employ and their families, is a matter of major concern.

While the basis of our presence here, as anywhere else in the world, is economic, the benefits to the community in which we operate go far beyond economics.

Americans have certain values, hopes and beliefs. We did not leave these behind when we came here. Any steps taken at home which would remove or limit our presence here can only reduce our capacity to project these values to contribute to understanding and to the institutional structures which are necessary to peaceful change, equality, and human progress.

The divestment initiatives which have surfaced in the United States fall in this category. Well-intentioned people may believe our presence here is harmful to the cause of justice and equality. This is not so, and we would welcome an opportunity to make that clear.

AMCHAM in South Africa was founded in November 1977. There were initially 90 founding companies out of a total number of about 350 American firms operating in the country. AMCHAM's current membership is just under 300 companies, 90 of which are South African.

The Chamber is a voluntary association of businessmen concerned with US trade, investment and local community services. It operates in concert with host country business firms, affiliates, individuals and government.

There is a wide spectrum of activities which work to develop prosperous, amicable, economic social-relations between US business and industrial interests and those of host countries.

The goal is to promote the beneficial concept of US private enterprise and to encourage various projects for the benefit of host countries.

AMCHAM represents its members before government, business communities and the general public of the host country. It maintains systematic liaison with US Diplomatic and Consular posts.

Similarly, it conducts systematic liaison with the South African Government on matters conducive to the freer flow of international trade and investment.

It thus seeks to minimize discriminatory or restrictive government practices, whether US or local, which could impede the international flow of goods, people, services and capital.

Shortly after AMCHAM's formation a major project was undertaken, namely the development, construction and operation of a private commercial high school in Soweto. Multi-national in concept, it directed members to the problems of education for black high school students.

Known as Pace Commercial College, the school has now been operating for three years and represents an investment of $6 million.

More detailed information about this remarkable school is provided further on in this publication.

AMCHAM also supports, and is actively involved in the administration of, the Sullivan Principles.

It conducts frequent meetings which are designed to promote a cross-flow of information among the eight Sullivan Task Groups operating in the country. American companies devote an unusual amount of time and effort to implementing the Principles. It is difficult to determine the exact amount of money thus spent, but it is estimated to be about $70 million since the introduction of the Principles.

AMCHAM has adopted a strong position with the US Government on various proposals for sanctions on trade and business, the most well-known being Export Regulation 175.

It is in regular contact with the South African Government and has played a role in lessening some of the more oppressive effects of the apartheid system.

AMCHAM knows that while their American members employ a mere 120 000 people compared with an economically active black population of 7.5 million, their impact on the disentanglement of a complex situation in the country has been dramatic.

It is concerned about the activities of those organizations within America who preach disinvestment from South Africa because an economic group left weakened and perhaps unsympathetic, will not maintain the pace of progress which has been so apparent over the past five years.

AMCHAM operates in South Africa with a professional staff and has standing committees dealing with diverse matters such as black education and training, South African and US Government relations, industrial relations, the Sullivan Code of Employment Practice, trade and investment and the Pace Commercial College.

Its Board of Directors is represented by the heads of 15 major US com panies who are determined to maintain economic and social progress in South Africa.

SPECIAL PROJECTS BY US COMPANIES

The development of skilled black workers in industry and commerce is the best way for disadvantaged citizens to obtain a fair economic stake in the country.

Many companies have embarked on intensive technical training and educational programs for artisans, maintenance operators and technicians.

One company has developed a graduate institute to provide business, social and personal development training for pre- and post-graduates.

Since functional literacy is essential if black employees are to fulfil their potential, many companies have embarked on literacy training programs.

One US company operating outside the metropolitan areas has developed a unique means of upgrading black education. Each year a group of children are selected at US Grade 9. For four years they receive enriched education at weekends and winter schools. The subjects taught are English, mathematics and science. They also receive career guidance and general orientation in social, economic and personal development studies.

US and other companies in the Eastern Cape have contributed $1.6 million to build a technical college for blacks to study for skilled and technical qualifications.

A major contribution to the upgrading of black education is the School Video Project costing some $2.5 million. A comprehensive high school program in mathematics, physical science and biology has provided more than 300 tapes to 60 black schools, backed up by suitable teacher training.

To assist the growing black business sector, some US companies have provided special training for existing and aspiring businessmen.

In the Black Youth Leadership Program, a US company in the Transvaal each year selects between 30 and 60 young blacks to undergo Outward Bound-type leadership training.

The best way to help translate job achievement into symbols of community progress is the provision of quality housing, and significant efforts have been made by several US companies in this regard.

In Soweto two major groups of model homes have been built and sold to employees of US and local companies. In the Cape no less than seven programs of urban renewal have been established to upgrade existing homes and to build new houses.

WAGES AND BENEFITS

The gap between per capita white and black incomes – sometimes quoted as firm evidence of the exploitation of black labor in South Africa – has narrowed steadily in recent years.

While the ratio of skilled to unskilled wages in the industrialized West is approximately 1:2, in South Africa it is approaching 1:2.5. The narrowing of this gap (which was 1:3 as recently as 1980) is taking place despite the fact that skilled positions are predominantly filled by whites.

Nearly all American companies now pay equal wages for equal work, and black wages have increased by an average of more than 20 percent per annum over the past four years.

The impact of these wage levels on the total society has been significant, but the wage gap can only be totally eliminated through accelerated upward mobility of blacks. This is why training and education is so high on the list of priorities for American companies.

Similarly, the vast majority of American employers have introduced uniform pension and medical aid plans for all races.

EDUCATION

Most American companies operating in South Africa are actively engaged in improving the education of their employees and of the black community as a whole.

In 1953 the South African Parliament created a separate education department for blacks. From that date until 1979, education was primarily given in the medium of black vernacular up to Grade 7. That requirement, combined with inferior educational facilities and different course content, seriously curtailed black potential to acquire satisfactory basic education. It also seriously impeded their ability to communicate effectively in the English language.

Following student unrests in 1976, the government made significant changes. Since 1979 parents have been able to select either English or Afrikaans as a medium of instruction for their children after the third year of schooling. Furthermore, compulsory education is now being extended to blacks.

In 1983, the South African Parliament passed a bill limiting admission of other race groups to white universities and requiring the universities to administer those quotas.

Nonetheless, black participation in higher education continues to grow. University students in South Africa totalled 158 836 in 1982, with nearly one-third enrolled at the University of South Africa, a non-residential university. Of these students, 27.5 percent are black – an increase of 14.7 percent from 1972. Black students now make up six percent of those enrolled at residential universities and classified as white.

Acting independently, American companies are developing progressive programs designed to have a catalytic effect by providing a model for extension to the entire community.

An example is the "Adopt-a-School" program at the primary and secondary levels. It provides facilities, support for teachers, as well as materials (including libraries), audio-visual aids and computer-assisted education. Currently 76 American companies have "adopted" 150 schools. The "Adopt-a-School" effort is now being extended to the entire business community in South Africa.

Bridging programs are also showing results. One company provides an academic support system for university freshmen which is made compulsory for recipients of its tuition grants. In 1982, the second year of operation, black students achieved a pass rate of 78 percent, compared with the national average of all races of 40 percent.

Adult education, conducted in company facilities in the evenings, has also gained broad support. A program pioneered on the East Rand by a group of American companies is now available to employees of all firms in the area. The Manpower and Management Foundation of South Africa, who accepted this concept of continuing education, has established a National Continuing Education Program in centers throughout South Africa, to provide educational enrichment and vocational education for large numbers of employees in US and local companies.

The key to long-term improvement in the quality of black education lies in upgrading the professional competence of the teachers. In 1982, 18.9 percent of primary and secondary teachers of blacks were professionally unqualified; an additional 71.5 percent were under-qualified.

In-service teacher training is therefore being given priority. A Teacher Opportunity Program (TOPS) has been designed and is in operation in four regional units, with participation of 80 – 120 teachers in each. Data will be available in 1984 to evaluate the program.

And now to Pace Commercial College, a school unique in South Africa and entirely the creation of American business:

It owes its existence to the initiative of the American Chamber of Commerce who, in consultation with many leaders in the black community, embarked on the ambitious project of building the $6 million school.

PACE has 28 classrooms, a theatre-cum-assembly hall, a library, a kitchen and canteen, a gymnasium and a wide variety of other sports facilities. Few schools in all of South Africa can boast such splendid facilities.

PACE's broad objectives are:

(1) to provide opportunities to help each child to achieve his or her fullest potential and to move into the world with confidence and dignity.

(2) to aim at standards high enough for school-leavers to be competitive across all dimensions of race in the job-market, and

(3) to allow the community at large access to its facilities whenever feasible, so as to uplift the quality of life for all in Soweto.

As a private school, PACE is able to be innovative in the educational process. For example, it is the first school in Soweto to have a fully-equipped theatre, the first to introduce physical education in the curriculum, the first to have a computer-based teaching system, the first to serve a balanced midday meal to all pupils and staff from its own kitchens, and the first to plan regular visits by its pupils to actual work-situations in commerce and industry.

At present full fees amount to $1 800 per annum. Few parents are able to afford this, but all are expected to make a minimum contribution of $600 per pupil per year towards the full cost. The vast majority of children are, therefore, sponsored by donations from the private sector towards an educational fund. Donations are tax deductible. These donations at present come from some 200 companies, trusts and individuals, roughly half of which is South African and half American.

In the capital funding of PHASE II, completed in November 1983, a number of major contributions have come from South African organisations, so the initiative of AMCHAM has been endorsed and generously supported by local companies.

Indeed, an underlying concept in founding PACE has been to aim only for superior standards in both its teaching personnel and in material facilities so that the school may serve as a model.

TRAINING AND DEVELOPMENT

The accelerated advancement of blacks from their former customary role as unskilled workers into the skilled, technical, professional and managerial ranks has encountered many obstacles.

In the 1970's American companies began opening higher level job opportunities to blacks. Most of these endeavours proved a sad disappointment. The vast majority of blacks in the work force were inadequately educated, few could comprehend or communicate in English, while most were abysmally ignorant of the simplest business concepts; neither did they appreciate the values and disciplines essential to effective participation in a modern commercial or business environment.

A number of American companies therefore experimented with ways to overcome these deficiencies. The programs developed varied greatly and were based on differing perceptions of the problems. A number of these programs experienced a high failure rate. In general, however, the companies that have devised the most successful approaches are those who have attempted to systematically address the causes of the problems. They have realised that social handicaps take time to eliminate and that building a solid core of skills creates most of the factors for further development.

Most companies are engaged in ongoing efforts to upgrade skills and functional literacy at operative levels. These projects are undertaken in both formal and on-the-job training situations.

In addition, larger employers have developed special programs to train skilled and technical personnel. The contents of these projects are relatively complex. Employees have to attain high standards of English language fluency and become skilled in mechanics, science, physics and/or business economics, etc. In addition, social development training was found to be necessary for the black worker to adapt to the social demands at that level.

Collectively, American companies are spending millions to develop a skilled workforce covering toolmakers, machinists, electricians, boilermakers, skilled clerical, administrative, sales and service personnel. Some 20 percent of their black employees are presently undergoing some form of development at these levels.

The developmental process becomes increasingly severe and prolonged where blacks are being trained for managerial positions. At these levels educational, technical and social deficiencies, become most pronounced. Such impediments notwithstanding, companies are determinedly and successfully promoting more and more blacks into positions leading to mid-management with definite prospects for further growth. The success of these intensive and often costly efforts has varied from company to company. One large firm can claim that blacks hold 14 percent of exempt positions, while many are still trying to reach the 5 percent level.

A general realization is emerging that only thru cooperative efforts can American business provide both the facilities and the programs to educate and train large numbers of black people vocationally.

A number of ambitious programs are being explored, planned or developed. AMCHAM is exploring a research project to develop specially designed programs to repair functional illiteracy and to provide readiness training in a wide range of skilled work.

The Sullivan Task Group on management development is exploring in cooperation with local and overseas institutions the possibility of establishing a Centre for Advancement in Business for the training of black managers and administrative personnel.

THE INFLUENCE OF US COMPANIES AND THE SULLIVAN CODE

The Sullivan Code was first endorsed by 12 US companies in February 1977 and comprised the first set of six Principles which have been subject to periodic amplification. From the outset, US and South African task groups were set up to coordinate, give direction, publicize and provide impetus for the movement.

In 1978, a reporting procedure was adopted. Through the reports, progress in the implementation of the Code is recorded, audited and rated. Other Employment Codes also began to emerge in South Africa as the Sullivan Code was established. However, it is no exaggeration to assert that no other statement of employment principles has mobilized the strong support and the determined and concerted action as that followed by American business.

By 1983, of the approximate 350 American companies operating in South Africa, only 147 had endorsed the Sullivan Code. These companies, however, employ over 71 percent of the total work force employed by US companies. Of the balance, 21 percent work for companies over which the US parent companies do not have majority control.

Since its inception, AMCHAM has played a major role in providing information about the Sullivan Code to American companies, both in South Africa and in the United States. Annual group meetings have been held in South Africa to provide a forum for exchanging information among signatory companies, and other interested parties.

The coordinated Sullivan Code effort started by US companies from a near zero base, has developed to a point where in 1983, 99 percent of Sullivan signatories reported fully integrated facilities; 100 percent reported equal pay for equal work with significant focus of effort on education, training, health, welfare, housing and black entrepreneurship.

The extent of the effort is measured by reported expenditure in these areas: in constant 1983 dollars it increased from $1.8 million in 1978 to $48.7 million in 1983, or, reflected in another way, from an average expenditure of $35 per employee in 1978 to $383 per employee in 1983.

As Doctor Leon Sullivan has remarked . . . "many of your activities have profoundly changed the social climate in your companies, in the communities of the workers, and in South Africa generally. Let me assure you that people in the United States are becoming increasingly aware of your commitment".

Mr. Frank Wisner of the US State Department . . . "US firms which have signed the Code are in the forefront for social change in S.A."

BLACK BUSINESS DEVELOPMENT

Promotion of black business development has been one of the areas of concern since the inception of employment codes.

It has led to the establishment in South Africa of a number of organizations. The main ones are the Small Business Development Corporation, the Small Business Advisory Service, and similar services attached to the major banks and universities.

Black business development has suffered over the years from many constraints such as lack of funds and expertise, government red tape, cultural barriers and others. There are a great many laws which adversely affect the ability of blacks to do business. Estimates of the exact number of laws, regulations and procedures involved, vary from "more than 100" to "about 500".

The Small Business Advisory Service says that 80 percent of the problems it encounters are of a legal nature. These laws range from ones specifically aimed at blacks such as the Group Areas Act, which prevents black businessmen from operating in the traditional central business districts, to the Black (Urban Areas) Consolidation Act, which restricts the conduct of business in black areas.

Laws applicable to all businessmen, such as the Companies Act and Factories Act, tend to be major hurdles to small, untrained and undercapitalized black entrepreneurs.

American companies represented in South Africa have played a leading role in helping businessmen of color to overcome these problems. Examples include business training conducted by many US companies in-house, as well as sponsored academic training locally and abroad. There are currently several hundred blacks following management-related courses in the US, sponsored by American corporations.

Several American companies have assisted blacks to set up franchise operations of their own, e.g. fast-food chains, tyre service, motor dealerships, gas filling stations, photographic processing laboratories and many more.

For example, a US multinational formed a company in which ten black businessmen had a majority shareholding and, with assistance from the multinational, established and equipped a photographic laboratory, trained staff and raised operating capital.

A major motorcar manufacturer established a black-owned car dealership in Soweto and assisted in converting the premises and training its sales and maintenance staff.

A major oil company established a black-owned filling station by providing buildings and a long-term operating loan.

In addition, several US corporations have, after seeking black suppliers to supply certain items and being unable to find them, set up black individuals in business to meet those needs. Examples are tyre and motor vehicle dealers, printers, etc.

A number of large US corporations also solicit supplies from black-owned businesses through direct contacts and advertisements in the national press.

Under the auspices of the Sullivan Task Group dealing with black business development, a catalogue of black suppliers has been compiled and widely circulated. One company has commissioned NAFCOC to conduct research in a specific geographical area to identify and publicize the existence of all small businesses operating in that area.

NAFCOC (National African Federated Chamber of Commerce)

Black businessmen saw the need to raise their own business standards and acumen as far back as the early forties. The original African Traders Organization was consolidated into the African Chamber of Commerce in 1955 and into the National African Chamber of Commerce (NACOC) in 1964.

This organization was re-organized into regions in 1969 to become the National African Federated Chamber of Commerce (NAFCOC) with which we are familiar today.

NAFCOC is today the recognized voice of black business in South Africa.

NAFCOC has been instrumental in establishing the first black bank, the African Bank Limited, as well as Black Chain, an $8 million-a-year store in Diepkloof, Soweto.

Other developments include the African Development and Construction Holding Company, a $7 million-a-year construction and development business, and a publishing company called African Business Publications.

Many American companies became associate members of NAFCOC which has resulted in the formation of various committees, designed to assist NAFCOC in its activities. Associate members also play a major role in supporting the NAFCOC bursary scheme which assists needy students to acquire business, technical and management training. In addition, many employees of American companies have given much of their own time to assist in the development of the organization, its branches and regional chambers.

HOUSING

US companies are active in the area of housing for black employees and to appreciate the efforts of these companies it is necessary to understand the circumstances in which they have operated as dictated by legislation and official government policy.

During the Second World War a large backlog of urban black housing had developed. This led to serious overcrowding, slum conditions and squatter developments.

The Government's response was a massive program of housing development during the 50's and early 60's. The results are characteristic of the South African landscape today, in which neat and orderly rows of stereotyped, standard-designed houses predominate.

There are no freehold rights enjoyed by blacks in the urban areas. Until 1979 the only form of ownership was a 30-year leasehold arrangement. In 1979 the 99-year leasehold system came into being. Prior to 1976 blacks were considered to be temporary residents in the urban areas. This curbed the desire of blacks to upgrade their accommodation.

Since this re-think by Government, there have been many instances of American companies trail-blazing and setting examples in the provision of home ownership and home improvement assistance programs. It is estimated that American companies have committed more than $1.6 million to housing projects in 1982 alone.

Many companies have also found ways to assist their staff in obtaining mortgages. They place reciprocal long-term investments with building societies in order that these institutions in turn, can provide the loans required at competitive interest rates, which, in some cases, are also subsidized by the employers. Often this is the only way these staff members, who have little or no deposit, could ever become "home owners".

B.A.B.S. (Build a Better Society), a multiracial group, attracted the attention of one large American organization, which then sponsored them substantially. A 50-family housing complex, including a community center, was built and is now occupied by enthusiastic tenants.

Equally significant are the projects undertaken by American companies in Port Elizabeth. Here many homes, from $14 000 up to $80 000, are now available to families. The sponsor company bears the cost of planning, civil engineering consulting services, paving and the supervision of the individually-designed constructions.

In most US companies based in South Africa many hours of supervisory and management time are expended in giving assistance to black staff who have limited experience of home ownership or development.

HEALTH CARE

Health care and the improvement of quality of life in black communities have received substantial support from the American business community. A significant supply of free drugs to clinics serving the black community and moves to improve the services provided by such clinics are examples of activities in this area. These have developed into two main projects which are being widely supported in 1984.

1. BETTERMENT PROJECT

This is a continuation of the Community Development Worker Pilot Project launched two years ago by American Companies.

It was initiated by the Primary Health Care Unit of the University of the Witwatersrand and the objectives are summarized as follows:-

"Community development can serve to help people become conscious of their potential as creative beings and to realize that they can control themselves and their environment in a better way."

The program began with eight trainees in June 1981. Of these, four graduated last July.

During the two-year program, which was funded by ten American companies at a cost of $55 000, the trainees attended the Primary Health Care Unit at Baragwanath Hospital. These trainees have already achieved concrete results in the Tembisa township. For example, in one section residents exhibited all the characteristics commonly found in communities which had been resettled without reference to the people's wishes. They had developed an in-group mentality and there was no sense of caring exhibited.

Mary Mkwati, one of the trainees, helped to start a youth group and, as a result, Parents Advisory Committees were established.

This has led to a spirit of communion and led people to realize that many of their problems can only be solved through their own concerted self-help efforts. There is now a Residents Association composed of an executive which coordinates the activities of seven subcommittees concerned with housing, transport, education, crime prevention, environmental hygiene, youth work and burials.

Youth groups and women's groups are flourishing.

So successful has this project been, that the Chairman's Fund of a leading South African corporation has donated $100 000 for the establishment of a trust fund to ensure its confirmation. Contributions have also been received from many American companies to finance the training of the next group of students.

2. COMMUNITY HEALTH EDUCATION PROJECT – "THE FRIENDS OF BARAGWANATH"

The major causes of illness in the black communities can most effectively be combated by a preventative approach.

In view of the nature of these diseases – enteritis, tuberculosis, malnutrition, diarrhoea and pneumonia – the best preventative strategy lies in the area of mass education.

The Friends of Baragwanath Trust has therefore been established to provide audio-visual facilities in communal areas where individuals spend time waiting to receive attention.

Material will be dubbed into vernacular languages and distributed to the various locations according to a library system.

INDUSTRIAL RELATIONS

Prior to the passing of the Labour Relations Act in 1981, black workers had no collective bargaining rights in South Africa and black unions were not recognized. The Liaison Committee system had no legal powers. Racial segregation of facilities, job reservation in favour of whites and unequal employment practices were widely practiced.

A number of American companies accepted the Sullivan Code requirements to desegregate facilities, establish equal and fair employment practices and recognize the freedom of association of black workers in 1977, thus anticipating and to a degree catalyzing the significant reforms in labour laws that have since taken place.

Following the legislative changes which opened up union membership to blacks, many new unions with large memberships were formed, some of which were highly militant and which caused American business to respond to them with some reservation.

However, this situation is rapidly changing. Many recognition agreements with both registered and unregistered trade unions are now in place. Most companies have installed disciplinary and grievance procedures to ensure shop-floor justice and many companies provide both management and workers with industrial relations and negotiative skills training. Several companies as yet not unionized, have set up vigorous works council systems as alternative avenues for negotiation.

ECONOMIC REVIEW OF SOUTH AFRICA

South Africa's economic importance in the world rests on the fact that it is the largest producer of gold and a major producer of platinum, diamonds and many of the strategic minerals such as manganese, vanadium, chrome, etc., that are essential to the industrial economies of the Western democracies.

While it lacks oil, the Republic has the third or fourth largest reserves of coal – surpassed only by the USA, Australia, and possibly the People's Republic of China.

Economically, it is a mixture of an industrial nation and a less-developed country. The land mass of South Africa is about 12.5 percent the size of the USA and its population (including the national states) about 11 percent of that of the USA. Yet its 1981 GDP was $74.4 billion, or only 2.6 percent of that of the USA.

Economic development is centered in four major urban areas – Johannesburg, Cape Town, Durban and Port Elizabeth. Approximately 65 percent of the annual GDP is produced in these areas and almost 40 percent of the population is centered in or around them. Other parts of South Africa remain relatively stagnant economically, but there is a government initiative to decentralize industry and develop the rural areas.

If there is a single driving force in the South African economy, it is gold. Thirty-six gold mines in the Witwatersrand geological basin produce two-thirds of the Western world's newly-mined gold. This metal constitutes the largest single source of export earnings. In 1980 when the gold price averaged $613 per ounce, bullion accounted for almost 45 percent of total exports. Tax revenues from the gold mines comprise more than 25 percent of total government tax income.

Nowhere is the role of gold in South Africa's economy more dramatically illustrated than in the Current Account of the Balance of Payments. It has often shielded South Africa from the serious balance of payments problems experienced by other non-oil producing countries.

South Africa's economy is very much export driven – minerals and metals (including gold) comprise 70 percent of total exports, with agricultural products making another 10 percent. The USA, UK, Japan, and Western Europe are its principal trading partners.

Like many other countries, South Africa has in the last two decades experienced severe inflation. It rose to a peak of 15 percent in 1980 and is still running at 12 to 13 percent. South Africa's main trading partners have succeeded in reducing their inflation rates to well under 10 percent.

Despite a temporary recession in South Africa which has resulted in a negative rate of growth in 1982 and 1983, the country is still geared to a 4 to 6 percent annual growth rate in GDP thru the remainder of this century.

US TRADE AND INVESTMENT

The start of the 20th century saw the first significant American commercial and financial advances into South Africa with the export of US goods, capital and technology.

American cars dominated the roadways; American finance helped establish not only the railway line between Lourenco Marques (now Maputo) in Mozambique and the Transvaal, but also one of the giant South African corporations. American miners and engineers helped open the country's gold and diamond mines.

Today about 350 US companies employing some 120 000 people have subsidiaries in South Africa, while over 6 000 US companies trade with SA. These companies have contributed directly towards making the US South Africa's major trading partner with the two-way trading figure approaching $4 billion in 1981 and a US investment base of about $3 billion.

It is significant to note that South Africa's main trading partners such as the United States, Japan, the United Kingdom, West Germany and France are the countries which dominate world trade.

The reasons for their involvement were well enunciated by Dr. G. Liener, Board Member of Daimler-Benz: "For many years South Africa has been a preferred country for foreign investments – and will indeed continue to be so because of a number of factors prevailing there. These include the firmly established principle of free enterprise, a stable system of government as well as relative economic stability."

Exchange controls over non-residents, in force from 1961, were abolished in February 1983. The country also does not engage in discriminatory currency arrangements. In September 1983, a further relaxation of exchange controls was introduced when mining houses in South Africa began to receive payment in dollars instead of rands for gold sales, thereby reducing the Reserve Bank's role in the spot markets as well as developing the forward markets.

South Africa is the only state on the continent of Africa to have accepted JMF Article VIII obligations and, in doing so, the associated commitments in terms of the General Agreement on Trade and Tariffs (GATT).

South Africa's main trading partners have taken full advantage of the country's technological needs and, as such, have come to dominate the automotive industry, the oil-refining and petrochemical industries, the telecommunication and computer industries and the ethical drug industry.

The mining industry in South Africa has developed into one of the most efficient and technologically advanced in the world. Its number one ranking in known world reserves of chromium, fluorspar, gold, manganese and platinum, and its high world ranking in vanadium, iron ore, diamonds, uranium, antimony and asbestos has been the country's economic backbone and has made it a key supplier of strategic minerals not only to the United States but also to the rest of the Western world.

Principal exports are gold, other minerals and agricultural products while principal imports to South Africa are oil, machinery and electrical and transportation equipment. In 1981 the US exported some $2.4 billion to South Africa and imported about $1.4 billion.

US exporters to South Africa need to comply with the trade restraints of Export Regulation 175 which prohibits the sale of goods and technical data to the South African military or police. Consumer products and general goods are excluded from this prohibition. The end result of the effects of ER 175 is that UK, European and Japanese companies gained where the US lost out.

Notwithstanding these constraints as well as the insignificance of the Eximbank programs in South Africa, the 350 US affiliates in South Africa have prospered and have contributed significantly towards the advancement and development of the country's black labor force. While South Africa is short of skilled human resources there is a core of well trained skilled workers backed by a large unskilled labor group with the potential of being developed into a powerful and cohesive economic force.

GOVERNMENT RELATIONS

AMCHAM's relations with the US Government have become much closer over the past several years thru the common perception that the US private sector and the US Government have common goals in pursuing a policy of constructive engagement and in promoting change in South Africa.

This closer working relationship is manifested in many ways:

- Quarterly briefings on political and economic developments by US mission officers.
- The US Ambassador's major policy address at its annual business meeting in February, 1983.
- US mission officers serving as members of AMCHAM committees.
- Soliciting by the Embassy of AMCHAM views prior to the annual review of export administration regulations.
- Focusing of US Government programs on black businessmen (exchange programs, visiting experts, a US AID-financed training project for the National African Federated Chamber of Commerce) and

a continuing, close consultation on a number of current issues between senior AMCHAM officials and the Ambassador and his staff. The sound relationship is mutually beneficial and both the Embassy and AMCHAM are committed to maintaining and strengthening it.

AMCHAM SOUTH AFRICA

The American Chamber of Commerce in South Africa began as an ad hoc support unit of some 45 American companies to USSALEP, a US based organization known as the United States-South Africa Leader Exchange Program.

In 1976 some members decided to expand activities – which up to then involved mainly the socio-political issues – to include trade, commerce, investment and American and South African Government relations. The Chamber was formed in November 1977 with 90 founding members.

In six years it has grown to 275 members, with 14 standing committees and a great deal of influence in the business, economic and social scene in South Africa.

The Chamber is proud to have played a role in the positive developments which have been taking place in South Africa in recent years. In spite of political pressure for divestment, AMCHAM continually involves itself with companies wishing to expand their stake in South Africa or to make new investments.

CONCLUSION

The influence of US companies in changing the character of South African society has been significant. It is continuing to achieve equality of opportunity and social justice in the work place. Its success in the promotion and monitoring of the quality of education, health and housing is exerting an influence out of proportion to the size of US investment in the country. American business is evolving strategies that can make even greater progress and have an even stronger impact if its efforts are encouraged and supported in the United States. If moves to bring about disinvestment (or divestment) are successful, then this progress will die away and the black people in the country will be the ones that will most severely suffer from such a retrogressive step.

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South Africa Review Service

UPDATE

Dresser Industries Inc.

April 1985

Dresser Industries has attracted the attention of shareholders concerned with U.S. companies in South Africa primarily for its refusal, until recently, to sign the Sullivan principles. In 1980 and 1981, shareholder proponents asked the company to comply with the Sullivan principles or withdraw from South Africa. The resolutions were supported by 11.3 percent of the shares voted in 1980 and by 8.9 percent in 1981. In 1983, church proponents asked the company to prepare a report on the labor practices of its South African subsidiary; this resolution was supported by 5.1 percent of the shares voted. Finally, a resolution in 1984 asking the company to sign the Sullivan principles was supported by 11.4 percent of the shares voted at the company's March 22 annual meeting.

The company signed the Sullivan principles, shortly afterwards, in May. In explaining the company's decision, E.R. Luter, Dresser's senior vice president for finance, told IRRC that management felt that the company is "as nearly in compliance" with the Sullivan principles as many of the Sullivan signatories. He also explained that "some people felt that if we went ahead and signed, it might take the heat off of some of the crazy divestment legislation that's being introduced." Because Dresser signed the Sullivan principles late in the reporting year, which ends June 30, it was not required to file a progress report in 1984 with the Arthur D. Little consulting firm on its implementation of the Sullivan principles. The company is required to file its annual progress reports with Arthur D. Little beginning with the reporting year that ends June 30, 1985.

The information in this report is taken from interviews in July 1984 with Dresser's management in South Africa and with shop stewards from the Metal and Allied Workers Union, which represents black hourly workers. This is IRRC's third report on Dresser's operations in South Africa. The first two reports were published in March 1980 and February 1981.

Important points to note about Dresser's operations in South Africa are that:

--Dresser was one of the first U.S. companies in South Africa to sign a recognition agreement with a black union.

--Dresser's work force decreased 25 percent between 1980 and 1984.

--Dresser has undertaken extensive training efforts to upgrade the skills of its black hourly work force.

--At least three black employees held skilled white collar positions in 1984, compared with none in 1980.

--In 1984, Dresser introduced a generous housing assistance program geared specifically to its black employees.

This updated report covers the following topics:

A. Dresser's operations in South Africa

  - --Description of operations
  - --Sales (including sales to the government)
  - --Investment and expansion

B. Employment practices

  - --Racial composition of the work force
  - --Desegregation of facilities
  - --Wages
  - --Fringe benefits
  - --Training
  - --Job advancement
  - --Worker representation

C. Public affairs activities

D. IRRC analysis

Throughout this report, IRRC uses the terminology adopted by the South African Institute of Race Relations and the U.S. State Department when describing various racial groups--Africans, coloreds (mixed race individuals) and Asians are collectively referred to as blacks. Thus, IRRC uses the term "black" where Rev. Sullivan and others use the term "non-white" and "African" where they use "black."

A. DRESSER'S OPERATIONS IN SOUTH AFRICA

Description of Operations

Name of subsidiary:	Dresser South Africa (Pty.) Ltd. (100 percent owned by Dresser Industries)
Location of operations:	Wadeville (a suburb of Johannesburg)--head office and factory

	Cape Town--factory operated by Dresser's Wayne division
Year operations began:	1974

Dresser South Africa (Pty.) Ltd. manufactures and sells Galion roadbuilding machinery and hydraulic cranes; Jeffrey underground mining equipment, ore crushers and materials handling equipment; Marion power shovels and drag lines; Dresser-Wayne pumps; and Lodge-Cottrell pollution abatement devices. Dresser also recently acquired the distributorship from International Harvester of the International Hough line of frontend loaders and bulldozers. Dresser's involvement in South Africa began in 1974 when it purchased Jeffrey-Galion and acquired that company's manufacturing facilities outside Johannesburg.

Sales (including sales to the government)

	1980	1983	1984
Value of Dresser's revenues in South Africa:	$59.4 million	$54.8 million	$47.7 million
Sales as a percentage of Dresser's worldwide sales:	1 percent	1.6 percent	1.3 percent

Dresser South Africa's management told IRRC that it expects the subsidiary's 1984 sales to be depressed, noting that sales during the first half of 1984 were 30 percent lower in inflation-adjusted terms than for the same period in 1983. Dresser, like many other capital equipment manufacturers, has been hurt by South Africa's prolonged economic recession.

Sales to government: The subsidiary's management estimated that 75 percent of its business is with the public sector, primarily with provincial and homeland governments, which purchase Dresser's road-building equipment. The company says its sales to the South African public sector are not restricted in any way by U.S. export regulations.

Investment and Expansion

	1980	1983	1984
Net assets of subsidiary:	$23.2 million	$32.3 million	$16.7 million
Assets as a percentage of Dresser's worldwide assets:	1.4 percent	1.7 percent	0.9 percent

The decline in value of Dresser's assets from 1983 to 1984 reflects primarily fluctuations in the exchange rate.

Dresser South Africa's management told IRRC that there has been no major capital expansion by the company in the last several years, nor does the subsidiary have any expansion plans at present. Dresser does not have a policy restricting further investment in South Africa.

B. EMPLOYMENT PRACTICES

Racial Composition of the Work Force

	December 1980		May 1984	
	Number	Percent	Number	Percent
Africans	443	44.2	284	37.0
Coloreds/Asians	57	5.7	78	10.2
Whites	503	50.1	405	52.8
TOTAL	1,003	100.0	767	100.0

Number of African workers without urban residence rights: 43, as of mid-1984.

A number of these employees are eligible for permanent urban residence rights under the May 1983 "Rikhoto" ruling. That ruling, by South Africa's highest court, declared that African migrant workers who had worked in an urban area with one employer for 10 years, or several employers for 15 years, were entitled to permanent residence rights within that area. Without these rights, an African worker who loses his job must return to the rural homelands, where the unemployment rate is very high. In the first half of 1984, Dresser helped six employees to obtain their permanent urban residence rights.

Desegregation of Facilities

Dresser removed all discriminatory signs in 1977, but de facto segregation persists in certain areas.

Management told IRRC that because workers are allowed to select their own lockers, habit and peer pressure still largely ensure that black and white workers are separated. IRRC reported in 1981, on the basis of its observations during a 1980 plant tour, that "the furnishings of the blacks' locker room were inferior to those in the locker room used by whites." The company has upgraded all locker rooms to an equal standard.

The company has two cafeterias--one serves an African-style menu, the other serves a western-style menu. Both are open to all races, and the western-style cafeteria is in fact used by all race groups.

Wages

Minimum monthly wage at Dresser (1 Rand = $0.50)

	July 1980	July 1984
Minimum entry-level wage (MELW)--45-hour work week:	R228	R351
Number (percentage) of African, Asian and colored workers earning no more than MELW plus 10 percent:	100 (25 percent)	17 (5 percent)

The MELW as well as the minimum pay for other hourly grades are determined through collective bargaining between management and the representatives of the Metal and Allied Workers Union.

Bonuses: Hourly workers receive an annual bonus of R99 to R493, depending on their pay level and years of service. Salaried employees--excluding salespeople and top management--receive an annual bonus equal to one month's pay.

Comparison of Dresser's minimum wage with surveys of minimum income requirements: Two universities, the University of South Africa (Unisa) and the University of Port Elizabeth (UPE), conduct semi-annual surveys throughout South Africa and publish income figures theoretically sufficient to cover the minimum requirements of an African family for health, hygiene, shelter and clothing. The figures include allowances for food, clothing, housing, transportation, taxes, minor medical and education costs, minor household supplies and fuel and light. Because of regional differences in the cost of goods and services, these vary within the country. UPE's figure is called the Household Subsistence Level (HSL); Unisa's figure is called the Minimum Living Level (MLL).

Both universities also furnish figures designed to include costs for such things as minimal recreation and entertainment, personal care, contributions to pension, unemployment, major medical and burial expenses, and additional costs for clothing, food and transportation. Both are described as the amount needed for a "modest, low-level standard of living." The University of Port Elizabeth's figure--the Household Effective Level (HEL)--is 50 percent higher than its HSL. The University of South Africa's figure--the Supplemented Living Level (SLL)--is 25-35 percent higher than its MLL.

Based on periodic surveys of household size, the University of Port Elizabeth estimates that the average African household has six people, and it bases its HSL and HEL figures on this average household. The University of South Africa provides a series of MLL and SLL figures for households ranging from two to eight or more persons.

Because six seems to be a reasonable estimate of African household size, IRRC uses Unisa's figures for a family of six when comparing a company's minimum wage to the minimum income needed by an African household.

The table on p. 6 compares Dresser's July 1984 minimum wage with the University of South Africa and University of Port Elizabeth's figures.

The company's MELW has remained relatively constant in real terms. In 1980, the company's MELW was 17 percent above the Minimum Living Level, and 32 percent above the Household Subsistence Level, then in effect for an African family of six.

Equal pay for equal work: To help ensure equal pay for equal work, Dresser uses a formal job classification system for its salaried employees. Job classifications for hourly employees are based on a system developed by the industrial council for the metals industry, to which Dresser belongs.

(1 Rand = $0.50)	Wadeville	Percent July 1984 MELW above (below)
Minimum level		
Unisa's Minimum Living level*	R303	16
UPE's Household Subsistence level**	279	26
Supplemented level		
Unisa's Supplemented Living level*	400	(12)
UPE's Household Effective level**	419	(16)

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* February 1984 figures for an African family of six.
** April 1984 figures for an African family of six.

The following tables show the average pay, by race and job grade, of hourly paid workers at the Wadeville factory and of Dresser's white collar employees. As the first table indicates, there is only one hourly grade in which both blacks and whites are employed. However, the average pay for both Africans and coloreds is higher than that for whites in this grade. The second table indicates that in four of the nine integrated white collar job grades, the average pay for Africans, Asians or coloreds is higher than that for whites.

AVERAGE PAY BY RACE AND JOB GRADE: WADEVILLE FACTORY*
(July 1984)

Hourly Grades	Number of Employees per Job Classification					Average Pay: Rand per month			
	Africans	Asians	Coloreds	Total Blacks	Whites	African	Asian	Colored	White
H-I	19	—	—	19	—	341	—	—	—
G	71	—	—	71	—	390	—	—	—
F	19	—	—	19	—	429	—	—	—
E	4	—	—	4	—	438	—	--	—
DDD	18	—	—	18	—	448	—	—	--
DD	12	—	—	12	—	536	—	--	—
D	20	—	—	20	—	624	—	—	--
C	6	—	—	6	—	653	—	—	—
B	1	—	—	1	—	731	—	—	--
AA	8	—	5	13	8	1130	—	1124	1091
A	—	—	—	—	34	—	—	—	1364
	178		5	183	42				

* This table excludes Dresser's 10 apprentices, as well as 89 Africans, 56 coloreds and 103 whites employed in hourly paid positions at Dresser facilities other than the Wadeville factory.

AVERAGE PAY BY RACE AND JOB GRADE: NON-FACTORY JOBS
(July 1984)

	Number of Employees per Job Classification					Average Pay: Rand per month			
Grades	Africans	Asians	Coloreds	Total Blacks	Whites	African	Asian	Colored	White
2	1	—	—	1	—	497	—	—	—
3	6	2	4	12	—	543	400	380	—
4	11	—	3	14	9	644	—	403	635
5	4	1	1	6	13	708	500	520	684
6	4	—	1	5	19	692	—	780	840
7	2	—	—	2	13	918	—	—	899
8	3	2	4	9	21	820	859	805	950
9	—	—	—	—	6	—	—	—	1,170
10	—	—	—	—	3	—	—	—	1,170
11	1	—	1	2	5	1,380	—	1,185	1,263
12	1	—	—	1	8	1,236	—	—	1,439
13	—	1	—	1	30	—	1,370	—	1,598
14	—	—	—	—	60	—	—	—	1,980
Exempt 3	—	—	1	1	19	—	—	1,939	2,241
TOTAL	33	6	15	54	206				
Other Exempt*					66*				

* The exempt salary grades comprise the upper management/supervisory echelon in which salaries range between R1,817 and R4,125 per month. Except in Exempt grade 3, there are no black employees in the exempt grades.

Fringe Benefits

Pension: All hourly employees are required to belong to a pension plan administered by the industrial council in which Dresser matches the employee's contribution of 6 percent of his pay. Employees are vested in the plan after 10 years of service with the company.

Salaried employees are required to join a company pension fund in which employee and employer each contribute an amount equal to 6 percent of the employee's pay. Vesting in this plan occurs after 10 years of service.

Medical insurance: White employees are required to join the company's medical plan. For black employees, membership in a medical plan is voluntary, and they may choose to join either the company plan or a separate African-only plan. The African-only medical insurance is able to charge lower premiums than the regular company plan because Africans use medical facilities less often than whites and because their hospitalization costs are lower. In mid-1984, 14 percent of Dresser's black employees belonged to a medical plan--9 percent had joined the company plan, and 5 percent had joined the African-only plan. In 1980, less than 1 percent of Dresser's black employees had medical insurance.

Housing assistance: At the time of IRRC's visit, Dresser did not have a housing assistance program in place but was in the process of developing one. The company had surveyed its black employees as to their housing needs, and the personnel manager had attended meetings of the Sullivan signatories' task group on housing. The new program, which was established in August 1984, is open to all employees who have two years of service and are earning less than R8,000 a year. The program is designed to assist employees to purchase a home or to electrify or otherwise improve a home they already own.

Home purchase--Dresser will guarantee mortgages for eligible employees by depositing funds with the lending institution equivalent to the amount that the lending institution would normally require the employee to pay in a down payment. Dresser's assistance will thus enable employees to obtain a mortgage for the full value of the house. In addition, Dresser will subsidize 10 percentage points of the existing market interest rates for mortgages (currently well over 20 percent in South Africa). The monthly repayments of the mortgage may not exceed 25 percent of the employee's monthly earnings.

Loan for electrification--Dresser will provide an interest-free loan for the full amount repayable over two years. Employees wishing to make use of this assistance must submit at least two quotes, and the successful contractor will be paid directly by the company.

Other home improvement loans--Dresser will provide an interest-free loan up to three months' salary repayable over two years. The employee must submit at least two quotes, and the successful contractor will be paid directly by the company.

By the end of January 1985, 15 employees had received loans or mortgage guarantees under the new program.

Training

Literacy training: An important component in Dresser's overall training effort is literacy training. The company explains that production workers must be able to read mechanical drawings before they can advance to skilled jobs. In 1984, 29 African employees were taking literacy training in English, having already received literacy training in their native African languages.

Operator training: Most black hourly workers are employed as machine operators or as operator/fitters, a somewhat more skilled position. As of mid-1984, 108 black employees had received operator training at Dresser's training center, and many had been upgraded as a result to operator/fitters.

Artisan training: Dresser has five blacks and five whites in a formal artisan apprenticeship program. The apprentices receive their theoretical training at various local training centers and technical colleges. Practical training is provided in-house in the company's training center and on the shop floor. After two-and-a-half years in the program, apprentices are eligible to take a national trade test certifying that they have attained artisan status.

Supervisory training: In February 1984, four blacks—the dispatch and receiving supervisors, the industrial chemist and the stores chargehand--attended a course on supervisory skills. The company notes that the chemist "is not a supervisor in the true sense" but that "she now has been transferred to the industrial relations department where it is believed that the interpersonal skills acquired in the course will be of benefit."

Later in the year, the chairman of Dresser's shop stewards committee took a course in labor relations.

Servicemen's assistants: Dresser has several service centers throughout the country where it provides maintenance and repairs to its customers. In 1984, 57 blacks employed as servicemen's assistants at various service centers were receiving basic training in use of hand tools and other skills.

Advancement

In its February 1981 report on Dresser's operations in South Africa, IRRC reported that, as of July 1980, there were no blacks in any skilled, white collar positions, and no black employees supervised whites. By mid-1984, this was no longer true. The highest-level black employees include a colored employee who is the office administrator for mining products, an African woman trained as an industrial chemist who is now responsible for the company's black community affairs programs, and an African who supervises the company's computer operations and has a staff of three—including one white—reporting to him.

Among blue collar positions, the highest level blacks are employed as artisans and skilled operators in the second highest hourly grade. Few blacks are employed in supervisory positions, however. In the factory, the lowest level supervisory position is that of the hourly paid chargehands, who typically have had previous experience and training as artisans. The next level of supervision are the foremen, who are salaried. At Dresser, all of the chargehands and the factory foremen are whites. The company does employ two black supervisors in its warehouses, both of whom are salaried.

Dresser's top management says it tries to encourage managers to recruit and develop blacks for skilled and higher-level jobs. The personnel requisition form was recently revised so that managers must now state whether an African, colored or Asian has been considered for the position. As the personnel manager told IRRC, "We are trying to establish the idea in the minds of our line managers that this is something we are trying to accomplish." The company does not set numerical goals for recruitment or advancement of blacks.

Worker Representation

Black hourly paid employees at Dresser are represented by the Metal and Allied Workers Union (MAWU), which is affiliated with the Federation of South African Trade Unions. Dresser recognized MAWU in 1982, after black workers went on a one-and-a-half day strike to ask for higher wages and to demonstrate support for MAWU. White hourly workers are represented through two other unions—the South African Iron, Steel and Allied Industries Union and the South African Boilermakers' Society—but, unlike MAWU, they do not have plant-level recognition agreements with Dresser.

All three unions are represented on the industrial council for the metal industries, to which Dresser belongs, where they meet with employer representatives to negotiate minimum wages and basic working conditions for the metals industry. In addition, MAWU negotiates directly with Dresser management to seek improvements in wages and working conditions beyond those set by the industrial council.

MAWU members elect 10 shop stewards to represent them in negotiations with management and in resolving grievances through the formal grievance procedure. Shop stewards are allowed to hold shop stewards meetings and to resolve grievances on company time. In addition, the company told IRRC, "certain shop stewards are involved in union activities at other times and, providing their business is legitimate, have never been refused by the company."

In a meeting with IRRC (at which management was not present), MAWU shop stewards discussed labor relations at Dresser. They said that top management officials have generally been fair and responsive to concerns voiced by the union. They said that management has shown a willingness to compromise in wage negotiations. In addition, they noted that during a recent economic downturn, management had accepted the union's proposal that the work week be reduced from 45 to 40 hours to prevent 40 workers from being retrenched.

Shop stewards drew a distinction between top management, however, and the white foremen who are the first line supervisors for black workers. In the past, the shop stewards said, black workers have experienced incidents of racial hostility by white supervisors, but they said the situation has been improving since MAWU was recognized by the company.

Shop stewards also voiced some dissatisfaction with the formal grievance procedure, which they argue moves too slowly, causing workers to drop grievances before they are satisfactorily resolved. As a result, the shop stewards said, they often prefer to meet informally with management to resolve grievances. In response, the company commented in a letter to IRRC, "this procedure was freely negotiated as part of the recognition agreement which is due to be renegotiated in 1985. Presumably at that time MAWU will initiate renegotiation of this procedure if workers' representatives consider it appropriate. In the meantime management believes that de facto practices are satisfactorily resolving potential problems—Dresser does not consider good labor relations to be confined to or by the letter of written agreements."

C. PUBLIC AFFAIRS ACTIVITIES

In 1984, Dresser contributed R37,000 to projects outside the workplace primarily benefiting blacks, particularly in the field of education. Some of the major programs are as follows:

--Dresser contributes R6,000 a year to St. Anthony's, an adult education and training center. In 1984, the company also contributed R6,000 to Pace High School, a commercial high school in Soweto established by the American Chamber of Commerce.

--In addition, the company has adopted two schools in the neighboring African township of Katlehong. The company contributes R3,500 a year to each school; in 1984, the funds were used primarily for purchasing lab equipment, books for the school's libraries and typewriters. Dresser also had the sports fields of both schools graded.

--Dresser contributes R1,000 a year to the University of the Western Cape, a university for colored students. In 1984, the company was also providing scholarships for four black university students, all of whom are either former employees or dependents of employees.

--In 1984, the company contributed R6,000 to the Urban Foundation, which seeks to improve the quality of life for urban blacks, and R3,000 to various health and civic projects, including an anti-hunger program.

The company told IRRC in a letter dated Jan. 29, 1985, that it plans at least to double its public affairs budget for 1985.

D. IRRC ANALYSIS

Dresser has made a number of changes and improvements in its labor practices since IRRC visited it in 1980, in spite of recessionary conditions that required its work force to contract by almost 25 percent over this period. The company recognized a black union in 1982 and instituted an employee housing assistance program in 1984; over this period, there has also been advancement by black employees into skilled white collar jobs. In mid-1984, the company also signed the Sullivan principles, and it will be required to report for the first time on its implementation of the principles for the year ending June 30, 1985.

Dresser management interviewed by IRRC appeared enthusiastic about implementing the Sullivan principles and were already participating in signatory forums, such as the task group on housing, to obtain ideas for possible company programs. Dresser appears already to have met most of the standards expected of Sullivan signatories in its pay policies and employee benefit programs. It lags behind the average signatory in contributing to public affairs programs benefiting blacks, but the company is planning to improve its record in this area by doubling its public affairs budget for 1985.

In this Analysis, IRRC will discuss the following questions:

- What are the strengths and weaknesses of the company's employment practices and public affairs activities? How has the company's performance improved over time?

- What is the outlook for Dresser's performance?

Employment Practices and Public Affairs Activities

Wages: Dresser's minimum wage as of July 1984 was relatively low, placing the company in the bottom third of the 12 companies visited by IRRC in 1984. (The other three companies in the bottom third included two companies that have not signed the Sullivan principles and a Sullivan signatory that operates in a rural area.) However, the company's minimum wage exceeds by at least 16 percent the amount needed for a subsistence standard of living for an African family of six. Moreover, the percentage of black workers earning the minimum wage or within 10 percent above it declined from 25 percent in 1980 to 5 percent in 1984.

The company uses a formal job classification scheme to help ensure equal pay for equal work, and information provided by the company on average pay, by race, within each of its factory and white collar job grades appears to confirm that an equal pay policy has been achieved. In four of the nine white collar job grades that are integrated, the average pay for Africans, Asians or coloreds is higher than that for whites. Only one of the factory job grades is integrated; however, in this grade the average pay for blacks exceeded that for whites.

The company's employee benefit programs are comparable to or better than those at other companies visited by IRRC. Dresser's pension plan, with its 10-year vesting period, is standard among U.S. companies operating in South Africa.

With regard to medical insurance, Dresser, like many other U.S. companies, has provided an option to its African employees to join a lower cost, African-only medical insurance plan that has benefits comparable to the regular company plan. In this way, Dresser helps to ensure that Africans, who generally submit fewer and lower medical claims than whites, are not subsidizing white plan members. Despite Dresser's efforts to structure an equitable medical insurance arrangement for black employees, relatively few--14 percent--of its black employees had joined either plan. The low black participation rate may indicate that Dresser needs to take more effort to publicize and explain the availability and benefits of its medical insurance plans. The company's recently launched housing assistance program, geared specifically to black employees, is generous in that it provides housing loans interest-free or at greatly reduced interest rates, an important benefit at a time when market interest rates in South Africa are well over 20 percent.

Training and advancement: Dresser has a range of formal training programs to enable black employees to advance into higher level jobs. The company provides literacy training, various levels of operator training, and apprenticeships to enable blacks to move above the unskilled level and into semi-skilled and skilled jobs. That black advancement has occurred on the shop floor is indicated by the fact, mentioned earlier, that the percentage of black employees earning less than 10 percent above the minimum wage decreased substantially from 1980 to 1984. Some black advancement has also occurred within white collar jobs. In 1980, Dresser had no blacks in skilled, white collar positions, and there were no black employees supervising whites. By mid-1984, in contrast, the highest level black employees included the office administrator for mining products, the director of the company's community affairs program, and the data processing supervisor, who had a white employee reporting to him.

Dresser's management is also seeking to foster affirmative action attitudes among its white managers. The company recently revised its personnel requisition form so that managers must now state whether a black has been considered for the job under consideration.

Worker representation: Based on interviews with both management and black shop stewards, Dresser and the Metal and Allied Workers Union appear to have developed a sound working relationship. The black shop stewards credited Dresser management for consulting the union before making decisions such as retrenching employees and for being willing to compromise in order to reach mutually satisfactory agreements. The recognition of the union also appears to have enabled black employees to obtain more respectful treatment from their immediate white supervisors.

Public affairs activities: Dresser's contributions to public affairs programs benefiting blacks is the one area where the company clearly lags behind that of the average Sullivan signatory. In 1984, the average Sullivan signer contributed R200 per employee (white and black) to projects in the black community; Dresser's contributions amounted to only R48 per employee. (Although a preferable measure for comparing companies' public affairs activities would be the percentage of profits they spend on such activities, this figure is not available since most companies do not disclose profit figures.) However, the company plans to expand its 1985 public affairs budget to at least double the 1984 level, which will bring it more in line with other signatories.

Outlook

A major factor affecting the company's performance in the near future will be the state of the South African economy, which still shows no signs of recovering from a protracted recession. The recession has depressed Dresser's sales and caused the size of its work force to decrease between 1980 and 1984. At the same time, Dresser appears committed to implementing the Sullivan principles, and has recently established a housing assistance program for its employees and pledged to double its public affairs budget. Given the training programs already in place, black advancement into skilled and white collar jobs is likely to continue as white turnover occurs; more rapid black advancement will probably be dependent on an economic recovery.

PROGRESS IN IMLEMENTING THE SULLIVAN PRINCIPLES

Dresser Industries Inc. signed the Sullivan Principles in May 1984, but previously had always subscribed to the aims and objectives embodied in the Principles. Resolutions of the Dresser Board of Directors established a Code of Corporate Conduct echoing both the letter and spirit of the Sullivan Principles. South Africa operating management was charged with implementation of this Code. The I.R.R.C. report of April 1985 based on investigations conducted in situ at Dresser South Africa in July 1984, only two months after Dresser became a Sullivan signatory, is a measure of the sincerity and success with which the internal Code had been followed.

Since signing the Principles, Dresser has been active in expanding the scope of these programmes both quantitatively and qualitatively. Some of the more significant developments have been -

EDUCATION

During Fiscal 1985 total contributions to educational programmes have increased from R30 000 in Fiscal 1984 to some R100 000 in Fiscal 1985. This involves continued but increased financial support to -

- Katlehong and Alafang High Schools for blacks (Adopt-a-School programmes).
- St. Anthony's College, a multi-purpose, multi-racial (mostly black and coloured) technical college.
- Pace Technical High School, Soweto (five bursaries).
- University bursaries (five black employees' children).
- University of Western Cape ("open" university but with predominantly coloured student body).

Additional programmes in 1985 are -

- St. Anthony's teacher upgrade programme.
- St. Anthony's Winter School.
- T.O.P.S. (Teacher Opportunity Programmes, administered by the Urban Foundation).
- READ.
- PROTEC - Supplementary Technical Education for Stds. 8 - 10.
- Continuing Education Programme.

In addition to financial support, management commitment is also implicit in organisational contributions, particularly to the Continuing Education Programme. Dresser has assumed a leadership role in launching this programme in the Germiston area with seven participating companies consisting of U.S. (both signatory and non-signatory) and South African companies; the Chairman and Organising Secretary are Dresser personnel and the Company's training facilities are made available. This programme is officially recognised with attained grades recognised by the Department of Education.

COMMUNITY AFFAIRS

Financial contributions in this area have increased from R10 000 in Fiscal 1984 to R60 000 in 1985. Major contributions have been made to

- Urban Foundation
- Institute of Race Relations
- Legal Aid Clinic (primary sponsor Gillete S.A. Limited)
- Mobile Clinic (primarily sponsored by Dresser and Cutler Hammer Division of Eaton Corp.)
- Amahleke High School, Eastern Cape (provision of recreational facilities)
- Vulindlela Creche
- Old Folks Home
- Lakeside Primary School

In particular, managerial and organisational resources have been committed to the following projects: -

- Mobile Clinic

  In association with Cutler-Hammer, a local subsidiary of Eaton Corporation, we have now jointly sponsored and raised the necessary finance (R64 000) from American and South African local companies to purchase a mobile clinic for Katlehong, which will operate from the Katlehong Clinic and visit the outlying areas of Katlehong. Our white industrial nurse will also be active in the planning and co-ordination of the mobile clinic on a regular (weekly) basis.

- Amahleke High School

  Dresser arranged and sponsored the levelling of a sportsfield at the Amahleke High School in the Pirie district of the Eastern Cape, one of the villages that developed as a result of the Rural Development programme instigated by Monsanto at Bishu. During the coming year the company plans further assistance to the school.

- Creches

  One of our senior management, together with other Dresser employees was involved in repairs to the roof, geyser and cookers at the Vulindlela creche in Katlehong.

  Following the needs identified by the in-company task forces, the white nurse and a secretary in the company purchased blankets, stoves, heaters, clothes, toys and wool, had jerseys knitted and then distributed these to 5 creches situated in Katlehong, Vosloorus, Soweto, Tembisa and Eldorado Park.

- Old Folks Homes

  In addition, needs were identified by the task forces relating to the aged. Accordingly, blankets, stoves, heaters and toiletries were purchased and distributed to five old age homes in Katlehong, Vosloorus, Soweto, Tembisa and Eldorado Park (coloured.)

- St. Anthony's Rest Centre

  Our industrial nurse spends 4½ hours per week at the Rest Care Centre for the coloured aged at St. Anthony's, Reiger Park. The company has also made available goods and equipment to assist.

- Lakeside Primary School

  Dresser provided the equipment and labour to grade the sportsfields at Lakeside Primary School, Reiger Park. During the coming year the company will provide a pump to irrigate the fields. Our Personnel Officer coaches rugby on Saturday mornings at this school.

- Other Sport and Recreation

  One of our senior management employees regularly takes a group of 6 to 7 black children tenpin bowling on Saturday mornings. As a result, one black girl from his group was selected to represent Transvaal, gaining provincial honours (1st). Furthermore, the group also participated in the Junior Tenpin bowling championships held in June. This effort has achieved a lot to further multi-racial bowling. The company sponsored the championship.

  Another of our employees has been very involved with marathon running and on four occasions has involved 3, 6, 9 and 12 blacks together with whites in marathons. The company provided the necessary kits.

BLACK BUSINESS DEVELOPMENT

- Ellen's Clothing Manufacturers:

  Ellen's Clothing Manufacturers is a small concern providing employment opportunities for about 30 Coloured women in Reiger Park, a Coloured area of high unemployment. If these employment opportunities were not available, the families concerned would experience significant financial hardships.

  Some time in February she was burgled and lost all her finished stock, putting her in dire financial straits. Dresser South Africa, in conjunction with Citibank "adopted" the business, and provided assistance in the following ways:-

- In the early stages, Dresser's Manager of Industrial Engineering assisted with a personal loan of R800, when the money was needed urgently during one of his visits.

- The company arranged finance through a local bank, with a guarantee provided by Citibank.

- The company's industrial engineers advised and assisted in the layout of the factory and rebuilt the office accommodation.

- The Dresser Treasurer/Secretary helped prepare a budget, made arrangements with creditors, appointed and paid for the services of a bookkeeper.

- The Dresser representatives on the task forces contacted local American and South African companies and obtained orders for overalls and uniforms. Citibank have also assisted in stimulating business development.

Various visits were paid to the company by management and staff assisting in various ways. As a result, liquidation was averted and the company is well on the way to recovery. On-going assistance will be provided during the coming year.

- Obed Kaba

As a result of work orders from Dresser, Obed Kaba has set up in business as an independent painter after being unemployed and with no contracts.

- John Mabuso

Dresser has also engaged John Mabuso as an outside contractor to service all the company's forklift trucks. The contract fees paid to him by Dresser guarantees payment for his premises (which Dresser S.A. arranged through the Katlehong Small Business Association). With the assistance of the company, he is expanding into auto repairs and is hoping to be awarded a Toyota dealership. As these activities develop, Dresser will place further business with Mabuso.

- Sam African Construction

Similarly, Sam African Construction has been doing contract work for the company for the past 5 months. As a result, Sam now employes 5 people, (all of whom were unemployed before the opportunity was offered by Dresser), after starting out on his own.

- Affirmative Purchasing Programme

R300 000 worth of goods and services has been purchased to date from black businesses as part of an affirmative action programme introduced in 1985.

HOUSING ASSISTANCE

- Loan Programme

Under the programme detailed in the I.R.R.C. report, the following loans have been extended to black employees: -

	No.	Rands
House purchase	6	
Leasehold purchase/extension	11	
Electrification	7	
Other improvements	9	
	33	56 000

The company's Personnel Officer negotiated with the East Rand Administration Board and the Urban Foundation to make 10 building lots in Khumalo Valley, Katlehong, available for company employees. Loans for the purchase of these lots and the erection of homes are being negotiated by the company with the S.A. Perm Building Society, whereby Dresser deposits R31 000 as collateral for the granting of 100% loans up to an amount of R151 000. In addition, the company arranged for a subsidy of 33,3% for each bondholder, irrespective of level of income, with the Government.

- Hostel Assistance

Hostel facilities were obtained for 40 employees in a newly-built hostel in Katlehong. Their rent of R24 per month is being subsidised by the company to an amount of R8 per person, or 33,3%. Preference is being given to those employees who are studying, in that instead of living 14 to a room, as was the case, they are now 2, 3, 4 or a maximum of 8 to a room. In addition, the company has supplied them with desks, chairs, cupboards and mats. The hostel is next to the station and electricity, ablution facilities and eating facilities are vastly improved.

- Urban Rights

17 99-Year leases have been obtained for black employees, 46 black, coloured and asian employees own their own homes, 40 live in hostels and 29 live in rented accommodation.

EMPLOYMENT PRACTICES

The affirmative character of our employment code has been reinforced. In the last six months, of a total of 9 new clerical/secretarial hires in Wadeville Head Office, 7 have been non-white; all positions were previously held by whites.

- Workforce Data

Number of employees:	Black	265
	White	382
	Coloured	63
	Asian	9

The percentage movement in the work force has been as follows during the past year, in spite of the economic downturn.

	Total		
	Blacks	Col. & Asian	Whites
Manual	- 4,5%	- 1,0%	- 16,19%
Clerical/Managerial	- 3,0%	+14,9%	- 4,7%
TOTAL	- 4,0%	- 1,7%	- 9,2%

Total % of workforce in 1984	44,9	55,1
Total % of workforce in 1985	46,9	53,1

There has thus been a 2% movement of the workforce from Whites to Blacks, Coloureds and Asians. Also, it is significant that there was a 14,9% increase in Coloured and Asian clerical/managerial personnel.

EMPLOYEE PARTICIPATION

Participation of Black, Coloured and Asian Workers in Sullivan Programme Development

Task forces consisting of white, black, coloured and asian employees have been established in order to identify actual needs amongst company employees in the fields of Education, Housing, Health Care and Community Development. These task forces meet at least once a month, and have already identified many needs which have been dealt with. Such task forces have been established at Head Office and at branches.

TRAINING PROGRAMMES

The programmes described in the I.R.R.C. Report are ongoing.

SOUTH AFRICA INTERNATIONAL

Volume 15 October 1984 Number 2

IMPRESSIONS OF SOUTHERN AFRICA

Suzanne Garment

I. ZIMBABWE TAKES FIRST STEP TOWARD ONE-PARTY STATE

HARARE, Zimbabwe – Here in the capital of this country, once white-ruled Rhodesia, we see in the papers that the US has entered one of its sporadic periods of visible interest in the African continent. Assistant Secretary of State Chester Crocker is on the road again trying to give current negotiations on the future of Namibia another shove forward. Secretary of State George Shultz has delivered a major policy address insisting that African nations are taken seriously by America. The outgoing US ambassador to Zimbabwe has just announced an increase in food aid.

And Zimbabwe's prime minister, Robert Mugabe, is publicly beginning to take his country down the path toward a one-party state.

When the Mugabe government came to power via the elections of 1980, pessimists worried that Mr Mugabe, known as more politically radical than rival guerilla leader Joshua Nkomo, would turn the country into a left-totalitarian nightmare. This has not happened. In Zimbabwe – home to the unchangingly wondrous Victoria Falls – surface appearances are calm. Within Zimbabwean organisations, blacks and whites work side by side in a show of racial reconciliation. Officials of the big, new American investor in Zimbabwe, HJ Heinz Co, tell what a lovely and non-confiscatory host the government has been.

The speaker of the Zimbabwean assembly, Didymus Mutasa, is full of wit and charm. He speaks with the freedom of a man who has been the prime minister's comrade since the old days in the bush. "We are not heavily influenced by communism," he says to settle the question. "I still go to the Anglican church every Sunday, and I was in the bush for five years."

Then how come Zimbabwe regularly denounces the US in the United Nations? "Our UN representative has never been in the bush," says Mr Mutasa scornfully. "He has never held a rifle. And he's the one who's a communist."

What about the habit Mr Mugabe's political rivals have recently acquired of ending up in jail? "No one has harassed Joshua Nkomo personally," the speaker insists. As for Abel Muzorewa, currently in detention: "I told him it is not necessary to say bad things about us outside the country."

Suzanne Garment, associate editor of *The Wall Street Journal*, in which these four pieces were first published, visited South Africa as a guest of the South Africa Foundation from 20 February to 4 March 1984. The articles are reprinted with permission of *The Wall Street Journal*. Copyright 1984 Dow Jones and Company Incorporated. All rights reserved.

Finally, what about the murmurings that Mr Mugabe intends to make the country a one-party state? "We talk about this because the people say we should have unity. But we'll honour our present constitution."

"I trust Mugabe," says a white liberal. We are sitting at dusk, drinks in hand, on the lawn of a house in suburban Harare that rents for $325 a month, complete with swimming pool, tennis court and grounds of great beauty. Substantial houses come cheap these days in Zimbabwe, because so many of their white owners want out.

The next afternoon is hot and the corn is dry from the worst drought in living memory as we approach the village hall. Mr Mugabe is holding a rally for his party's youth league at the hall, which is about 50 miles from the capital. The three in our travelling party are the only whites to be seen anywhere. Hundreds of children in their school uniforms or Sunday best line the road to welcome the prime minister. He strides into the hall flanked by self-important, western-suited young advance men. A couple of thousand youths are packed inside, waiting for him. They have been warmed up by a party functionary. ("Long live Muganbo Mugabe! Down with Nkomo!")

Mr Mugabe speaks. Zimbabwean observers often accuse him of being too academic in his style. They must never have heard him; his hands move with hypnotic grace as he speaks in Shona to his party people: "When the sons of Zimbabwe took up arms, you fought the enemy, you lost blood and lives. Some you had to leave in the bush and mountains, in their graves.

"Now people are being murdered because of the dissidents. So from now on, we'll all work for the one-party state. It is our party congress in August that will arrange the structure. The parliament is just a debating society. If Nkomo stands up there, we will push him in his fat stomach."

Later on, a white Zimbabwean civil servant comments: "The one-party state is coming. The only question is when." A businessman singing the praises of the Zimbabwean government suddenly stops in the middle of his phone call and says: "I'd rather not talk about the rest of this on the telephone." A white builder in a bar says: "I stay here because I still enjoy it." Pause. "And because I can't get my property out. So I am sort of stuck." Says a white student on the plane from Bulawayo in southern Zimbabwe to Johannesburg: "I'm on my way now to South Africa." Are things good there? "Better than here."

The editor of one of Zimbabwe's still relatively free newspapers explains that Mr Mugabe's one-party fervour is meant only to stave off attacks from opponents on the prime minister's left within the party. Not many people worry actively about what may happen after the political opposition gets totally shut down. More are worried about the civil war that has broken out between Mr Mugabe's majority and Mr Nkomo's minority tribe. And everyone worries about the drought that may soon begin starving Zimbabwe's children.

This is a land with a reasonable claim to being the most beautiful on earth. It is a bitter thing to have to bet on the probability that the curse of destructive politics sooner or later is going to fall on the rain-starved country along with the curse of drought.

24 February 1984

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II. SOUTH AFRICA IN POLICY FERMENT . . . PERMANENTLY

CAPE TOWN, South Africa – The country is politically abuzz, but you wouldn't know it to look at this city at the end of the world. Cape Town exudes sweetness. It offers dramatic views of mountains and sea, the delights of the outlying wine country, and the pleasure of an 18th-century Cape Dutch architecture both warm and dignified. On Sunday afternoon I am walking through the city's underground shopping mall, casing the joint for a Monday morning assault on its ivory bracelets. Two black security guards approach. They don't look menacing, just curious.

"Where do you come from?" one asks.

"The US," I smile.

"No, no. What is your nationality? Greek?"

A pretty good guess, but not quite: "My father was Polish, my mother was Russian."

A pause. Then, "They ran away?"

"Yes. Someone was chasing them, and they ran away." We all laugh.

Those black security guards have nowhere to run, least of all to the starving black-ruled states on South Africa's borders. The Afrikaners who govern South Africa are equally trapped by its black majority. But until you arrive here you have no idea how unceasingly and energetically all the varicoloured citizens struggle in their chains.

This week a government committee recommended revising the country's Group Areas Act, which regulates where each ethnic group can work and live. Vigorous argument promptly ensued as to whether the changes constituted liberalisation or a crackdown. The government also announced that henceforth nonwhites would be allowed to set up shop in central-city business districts.

Hubbub followed over the question of who, if anyone, would actually be able to take advantage of the new opportunity. More important, the government has just proposed a new national constitution. The plan would give a parliamentary chamber to the coloured – those South Africans of mixed blood – and a chamber to the Indians. In a hotly contested referendum, the white voters accepted the plan by a surprisingly large margin. The vote was hailed as a sign of progress. Elections to the new chambers are scheduled for August, and the current white parliament now sits in Cape Town assiduously pursuing what the speaker calls the "fascinating" task of writing the implementing rules.

But controversy is not over on this one either. In a decorous government office complete with antimacassars on the stuffed chairs and real lace doilies under the tea cups, one of the plan's major architects – the picture of Afrikaner probity – defends it by noting the care with which it was drawn:

"This process began in the early 1970s with a government commission, which determined that it was time to arrive at a political dispensation for the Indian and coloured populations. Thus the cabinet appointed a committee, which in 1977 gave the government proposals much like the current ones. But disagreements mounted over the issue, so the government appointed another commission.

"Because the commission could not reach agreement, the matter then went to the new president's council of multiracial experts, which arrived at the principles of this new arrangement."

The process seems in the telling to be admirably deliberate, making progress while sternly resisting surrender to the political impulses of the moment. But something is missing: The Indians and coloureds were not given a referendum to ratify this "new dispensation," as everyone here charmingly calls it, that was crafted for them. So in Cape Town, the coloured still have not decided whether they want in.

Randall van den Heever is a teacher's son, principal of a coloured high school in the Cape and editor of the professional journal of a coloured teachers' union. He gives a good, brisk tour of the area's black and coloured sections, from meticulously planned developments to Crossroads, which has got to be the world's worst slum. Mr van den Heever's father is going to stand for parliament in the summer. The younger man is not yet sure whether he will participate in the vote.

"We should have had a referendum," he explains calmly in his Afrikaans-accented English. "Without a referendum the legitimacy of the new scheme remains in question. Participation in the elections will be low. Many of the best people will not stand. We will be seen as abandoning the blacks. The government will find it easier to co-opt coloured members for its own purposes. I don't find it attractive to reject a chance at progress. But I'm not yet sure."

They are all pulling and hauling here, wrestling with each other and themselves. Just about everyone you can buttonhole agrees that some of the plans the government claims to have for the ultimate political separation of the races are awful and that some of the actual improvements of the past decade are large. The situation is agonising. But it is not static: It is churning. To say that it gives sufficient cause for despair is so palpably false as to be immoral.

Back home, the House has passed a measure to force substantial American disinvestment in South Africa. When you ask about it here, almost all black and white anti-apartheid activists look at you like you're crazy. They cannot imagine why you would want to threaten the economic growth that has been the chief engine of racial progress and of the current South African political ferment. It's not easy to come up with an answer.

2 March 1984

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III. MOZAMBIQUE AWAITS SOUTH AFRICA'S RETURN

MAPUTO, Mozambique – Up until last week, President Samora Machel of the impeccably Marxist People's Republic of Mozambique had not granted an interview to a western reporter since October. At that time he was fighting off an armed internal resistance backed by his neighbour South Africa, and he asked the US to send him guns. But today he is ebullient over the security pact he has just negotiated with those same South Africans. President Machel appears to be bright, charming, even humane – and he presides over this capital that under his rule has turned from an exotic pleasure spot into a silently decaying corpse.

When the Portuguese left their colony of Mozambique in 1975, the capital was still named Lorenzo Marques. Droves of South Africans owned second homes nearby or were in the habit of just motoring in for their seaside vacations. The South Africans still speak nostalgically of the chinoiserie they could once buy in "LM," and of the city's huge and delicious Mozambican prawns.

"Just after the revolution," says our charter pilot as we descend past the city's huge harbour toward the airport, "you could buy most everything cheap if you paid hard currency. Later on, there was nothing left to buy. Still later, whenever I flew in I would fill boxes with bread and apples and hand them out at the terminal; the people had so little."

The city is now called Maputo, and the only big commercial craft in sight at the airport as we land are a plane from Aeroflot and one from Cubana. Looking for an entrance to the terminal, we step inside and find ourselves in the bar, filled with Africans and Indians and Cubans and East Europeans waiting to get aboard. They sit in the steamy heat as silent and anxious as though they were caught in purgatory.

The terminal beyond the bar is dark and empty except for a few loiterers and a couple of immigration bureaucrats. Glass is broken, handsome wood railings have been knocked apart, the floors are littered, tiles are coming unstuck from the ceiling. A pilot approaches us. He is from Aeroflot and speaks good English. He asks whether we are passengers for his flight. We say no, puzzled. He explains that because the airport's signs and personnel are gone, his human cargo often gets lost and he has to round it up before flight time.

We say he must be eager to get home. Yes, he says: "For me this is what you might call a forced landing."

An airport cleaning lady, born in Cape Town, South Africa, also speaks English. She helps us look for the man who is meeting us, and we give her South African money. She turns the coin over in her hand several times and says thoughtfully to herself, "I can buy a piece of bread with this, at the hard currency store."

Walking around Maputo you soon realise what a gift a piece of hard currency really is. The broad boulevards are deserted except for small numbers of African men and women. There are few cars, so you miss the characteristic motor hum of the modern city. The buildings are still large and fine, but the many stores in them are almost empty of goods. Here and there a line stretches in front of one or another emporium. This means that the store has actually received a shipment of something to sell, and word has got around. The lines are orderly and very quiet.

Abject as its poverty is, Mozambique is not the poorest country in Africa. Its particular ghastliness comes instead from the gulf between what it was once and what it is now. The chasm is apparent even in one of Maputo's few remaining bastions of international-class luxury, the famous Polana Hotel. It is a grand structure by the sea, and its magnificent swimming pool is still immaculately maintained. Inside, though, the air conditioning will not work. The corridors are unlit and the carpets mouldy from the jungle climate. There are bare overhead light bulbs and the certainty that something unfriendly is growing in the bathroom. The kitchen still aspires to quality – but the famous prawns are no longer on the menu. Rumour has it that Soviet trawlers make off with most of them.

But at least one place in the city is still well tended to resist the tropical heat: the president's palace, which in colonial times served as the Portuguese officers' club. If you have come to visit President Machel, you are first asked to wait in a rather elegant holding room, part of maybe the only building in the country where the air conditioning actually functions. This fact affects you approximately as if you had been in solitary confinement and looked up one evening to find your cell door open and your best friend beckoning you outside for tea and a chat. The feeling of grateful pleasure grows as you finally meet the president himself.

He is small, bearded, good-looking, dressed in the regulation military fatigues. He wanted to be a doctor, we have been told, until he learned that his colour would stop him. He is well briefed. To the journalist's husband, who worked in the Nixon and Ford administrations, he says: "You served under President Nixon; that must have been a hard tour of duty. President Ford must have been easier. And serving with Henry Kissinger must have been hardest of all."

He has answered some questions in writing and says he will take two more in person. The first is obvious: Why has a black hard-line Marxist like him decided to come to terms with South Africa? "We had the right objective and subjective conditions," he says. "All over the world people want peace, prosperity, progress. South Africa is a racist country with apartheid. But they, too, want peace. They want to draw the benefits from the enormous potential that exists in this region.

"The world today is no longer divided on the basis of ideology or religious beliefs. Everyone wants peace, and particularly economic, scientific and technical co-operation. Everyone wants peace because everyone wants to live well. And Mozambique's particular concern is that our natural resources be turned into wealth." In his written answers, the president has been quite explicit about the vast economic hole Mozambique finds itself in today and about the need for South Africa to help extricate the country. His explanation echoes the analysis that one Mozambican gave us in a casual street conversation: "South Africa will give us everything we need."

Then the second question to the president: Has the march of Marxism-Leninism through Africa finally halted? "It can't be stopped," he says, "because science doesn't stop. It keeps developing, unlike the Bible or the Koran, which can't produce anything new. Marxist materialism simply means I have confidence in my own strength, in my own ability to transform the world. You believe in the priest to cure disease; I believe in the doctor. Some say the drought and floods in Mozambique were God's will. I say no: These events devastated us because we are backward, and don't have dams to control the river."

That doesn't sound so different from plain old American pragmatism, says the intrepid reporter. "It can have many names," shrugs the president. You should explain that to your Soviet comrades, the reporter comments rashly. The president laughs. Naturally, his aides laugh too. But they seem to mean it. Word has it that the opening to South Africa and to the West in general reflects not only Mozambique's rotten economy but a broader disillusionment with its Soviet allies. Evidently last year for the first time, the annual visit of the Soviet fleet to Maputo was not celebrated with general festivities.

The interview is over, everyone gets up and the president kisses the reporter warmly on both cheeks. "That," he grins, "is Marxism." At the airport we find a government official waiting to send us off with a huge parcel of the famous prawns.

Here is Samora Machel, this lively soul and impressive performer, who presides over a place that verges on being a sort of kingdom of death. He may contend that his

Marxism has sailed through his country's economic catastrophe and the approach to Pretoria with its superstructure undamaged. But if his deal with the South Africans takes root, it will bring a big change in the way we must judge the probable direction of future African politics. It is not likely that the president is truly ignorant of how large his move has been.

9 March 1984

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IV. BEYOND RACIAL POLITICS IN SOUTH AFRICA

JOHANNESBURG, South Africa – The West today thinks of South Africa as a bastion of right-wing politics bordered by the Marxist states of black Africa. This picture is not quite accurate. As Karl Marx peers inquiringly at the African continent from whatever distant space he now inhabits, he surely recognises some major aspects of South African political development and whole paragraphs of the way South Africans of both left and right have come to talk about their future.

Here is one scene from that political development: My travelling companion and I are sitting in our hotel room waiting for our next appointment. This one is not on our formal schedule. The day before, we visited with a rich businessman of seemingly moderate views. Afterward, he phoned to say he knew someone we must see. The meeting must be confidential, he said, because this person was banned by the government and the contact might be illegal.

Our visitor appears punctually. It turns out that he has been active in anti-government politics for nearly 50 years. He knows the black and Indian and coloured protest groups, the communists and churchmen, violent and nonviolent strategies, the insides of courts and prisons. He is no self-dramatising Jacobo Timmerman; in his precise way he wants to explain why the South African security system operates as it does.

When acts of violent subversion began in the early 1960s, he says, the government sought to isolate suspected subversives from their fellows in order to break down the efficiency and the secrecy of their underground organisations. The authorities began to use house arrest and preventive detention, under which suspects in security cases can be held incommunicado for long periods of time. This practice eliminated visitors who might raise a prisoner's morale, shut out troublesome defence lawyers, and made prisoners more vulnerable to solitary confinement and torture.

The technique proved, in sum, to be a great device for stimulating conversation.

We know that the man sitting in front of us has been tortured, confined, harassed. Yet now he is sipping his Coke and telling us evenhandedly how since 1980 the government has been letting up in its security campaign. In fact he says he really wants to talk about something more fundamental than government abuses. "My friends," he says, "don't understand why I've refused to panic, refused to leave. But there is a huge engine of industrialisation here that has been forcing everyone together since the 1930s. It is going to make the next political steps around here peaceful ones."

The words are startling, coming from such an individual. But we have heard similar ones before, from a quite different but equally impressive source. Prof

Lawrence Schlemmer teaches political science at the University of Natal. He is an Afrikaner but a political liberal. He is also a friend and political associate of Gatsha Buthelezi, chief of the Zulu, an opponent of the government whom those on the left nevertheless mistrust as being too willing to deal with the authorities.

The main problem in the path of internal peace, the professor explains, is not "cheap racism" – though there is plenty of that around. Afrikaners also bring to the table their "primordial" perception of themselves as a *Volk*, a people united by bonds stronger than the state. As an Afrikaner, "I'd be prepared to have one-man-one-vote," Prof Schlemmer explains, "but not to have my language obliterated. That's where I'd say, 'Where's my gun, I'll fight.'"

The black protest movement in South Africa, he says, has always fought the simple racism. The movement has pursued a strategy of moral suasion and chastisement, with a wing breaking off now and then to threaten violent retribution against the sinners. But threats have not worked: No one now thinks revolution imminent. And Afrikaners refuse to feel guilty about their nationalism.

Therefore, judges the professor, the proper strategy for nonwhites is to build new organisations – like unions or modernised tribal units – to bargain for a proper share of the proceeds of economic development.

South African activists of widely varying views share this analysis: Old-style concepts of nationhood, and each people's old-style attachment to its land, have divided South Africa. By contrast, industrialisation is beginning to integrate the country.

We talk one morning with Andries Treurnicht, a legislator who has formed a new party to the right of the ruling Nationalists because he thinks the current prime minister has strayed too far toward a modern, European, multi-ethnic notion of what a state should be. We drink coffee after lunch with the Nationalist government's Minister of Co-operation and Development Piet Koornhof. He insists the government must settle Africans in their separate homelands and locate industry there. Otherwise South Africa will suffer the usual messy industrial mixing among peoples.

Some observers toward the centre of the spectrum chafe at how slowly the Afrikaners have been learning an industrial culture. "Afrikaners," says an editor of a large Afrikaans newspaper, "are only now coming to believe somewhat in free markets." "Economic restrictiveness," says a prominent judge, "is still an important factor in the persistence of our racial troubles."

But most feel that change is irrevocably under way. FS Bartos, chairman of a Barlow-Rand subsidiary near Johannesburg, tells of 20 years of gradually successful struggle with government and unions to open up more education and jobs to nonwhites – not from altruism, but because modern industrial production needs trained workers.

A young foundation executive puts the thesis more comprehensively: South Africa is not really so rich, because it does not have enough labourers in the modern sector of the economy. The country's Afrikaner rulers might have tolerated this under-performance indefinitely, but the riots of the 1970s made it necessary to provide more benefits to the country's poor nonwhites. The Afrikaners now know they need more wealth. But for this they need more skilled labour – more urban blacks, more educated blacks. The dynamic is inexorable.

Even a left-liberal professor at the English-speaking University of the Witwatersrand, where as a protest they do not fly the South African flag, says he sees the large forces at work. He will not say he is hopeful about the future, "but my expectations are somewhat less certain than they were."

Not everyone sees the good outweighing the bad in this South African future. The security politics of preventive detention will doubtless continue. More fundamentally, Archbishop Denis Hurley of Durban foresees a dual system of both land-based and industrial politics: "40% of the blacks will be in the cities; the government will upgrade them. The other 60%, even with economic breaks from the government, will continue to eke out a sad existence in the homelands."

On the radical left, people are even more disapproving of the new development politics. These activists want disinvestment by western capital in South Africa and do not want to abandon the politics of protest. They see that insofar as a more moderate politics succeeds, it will kill the chance for revolutionary change and destroy the opportunity the current climate presents for a political life of satisfying moral intensity. Once again, the far left and the far right conspire against the matter-of-factness of modern political life.

The hopeful economic determinism you hear in South Africa no doubt is too optimistic a view of the country's political future. But it makes a fascinating country even more so. The most closely held secret about the country, kept from us by those who tell us it is immoral to visit there, is that the place is vastly attractive in the literal sense of the word. South Africa's spectacular natural beauty, its riches, the poverty needing amelioration, the political and moral drama – all these beckon the outsider to become, you should pardon the expression, constructively engaged. But, perhaps even more important, a look at the nation makes it overwhelmingly clear that no good will be done there by the West's withdrawal.

5 April 1984

MANAGING THE SECURITY POWER BASE IN SOUTH AFRICA

James M Roherty

IN THE first of two studies on South Africa's "total national strategy" my purpose was to underscore "the international thrusts" of an altogether unique effort to support national policy (Roherty 1984). This effort, unique in its comprehensiveness and rationality, has major domestic thrusts as well. In the formulation of a principal architect of the "total national strategy," the undertaking is one of managing "South Africa's four power bases (the political, economic, social/psychological, and security bases) on an integrated whole" (Malan 1980). While General Malan and others have sought to lay stress upon the integral character of the overall national effort, it is appropriate for purposes of analysis to focus, in turn, on the respective elements in the "total national strategy." In this paper I focus attention on the management of the "security" power base – to the exclusion of others.

The present task is more challenging than the first inasmuch as there is no sector of the government of South Africa as difficult of access as "the national security management system" (NSMS). It is not difficult to discern the reasons for this situation. Whether one sets the context initially with the Boer Wars, the establishment of the Republic, or with the more recent "retreat from Luanda" (1976), the context in which Pieter W Botha found himself upon becoming prime minister (no less than his predecessors) was one of isolation, alienation, and perhaps some degree of introversion. These contextual factors have weighed heavily in the management of South Africa's security system. With the additional factor of having to put the security imperative as the dominating imperative after Luanda the context was one that produced a reluctance to discuss security matters (security management in particular) that became a hallmark of the early years of the PW Botha regime.

Today, it must be conceded, the architects of "total national strategy" are less reticent; indeed, they are in some instances anxious to elaborate on their strategy and its supporting structures. The context has changed. In its most salient respect this change can be put quite simply: "the total onslaught" *(die aanslag teen Suid-Afrika)* to which the Botha government felt compelled to respond in an equally total fashion is no longer "total" – and, consequently, there is today little reference to it. The military phase of the struggle, primary in a sequential sense only, is now largely completed. The present context is one of "transitioning" to political (constitutional), economic, and social/psychological priorities. In this context it is possible, and no doubt desirable, to be more forthcoming about the largely successful and

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This article is drawn from a contract study done by Professor Roherty, of the Department of Government and International Studies at the University of South Carolina, for the US Naval War College. The views, opinions and findings contained in it are those of the author, and should not be construed as an official US Department of Defense position, policy or decision.

largely completed military dimension of the "total national strategy." The contention that the "new openness" where security matters are concerned is the result of growing outside pressures cannot be wholly dismissed. On the other hand, if one thing is clear about the *modus operandi* of Botha it is a tight control over his agenda. The regime's success with regard to the management of the security power base is the principal explanation for its current willingness to discuss some of the details of that power base.

In spite of continuing constraints it is possible then at this juncture to portray in some detail both the structure and the workings of the NSMS, espcially if one has had the opportunity (as I have, in August 1979 and August 1983) to interview at length a number of "the principals" both in the formal system and the broader "defense community" of the Republic. Again, contentions that this system is shrouded in secrecy and that its mysterious burgeoning has come to light only recently, and then only partially and inadvertently, are less than accurate. What they reveal, *inter alia*, is that a significant corpus of publicly available documentation has not been widely or thoroughly assessed. At the same time it is fair to suggest that the manner in which the system "functions" (as opposed to the basic architecture) is not well understood outside South Africa – or for that matter, inside South Africa. How well one will be able to analyse "the politics of the system" will depend on how far the "new openness" carries, how ready a relatively limited number of government officials are to take up such questions and, not least, how professionally responsible scholars will be in their treatment of the subject. There is more than a patina of reasonableness to the criterion government officials employ in determining with whom they will display their new candour, namely, an open-mindedness on the part of investigators. The present moment is an intriguing one: the scholarly community and the press have never been more attentive to the South African scene; South Africans buoyed by political, economic and social progress on the domestic front and military-diplomatic successes in the region have a new willingness to tell their story. It remains to be seen how much will be made of this moment.

I intend to focus on the "keystone" agency in the national security management system (NSMS), the State Security Council (SSC) – and its supporting elements. My concern here is with "how the system functions," and, following the statutory mandate to the SSC, I shall assess the "advisory role" of members (in particular the so-called "political generals") and the development of intelligence by the principal agencies.

PROVIDING ADVICE

The national security management system (NSMS), indeed the entire governmental/constitutional reform package recently introduced in South Africa, has been the object of some highly vituperative commentary. It must be stressed that the workings of any political/bureaucratic process will be best understood by the long-time participant in that process. South African government officials, for understandable reasons, have been less inclined to discuss "how the system functions" than how the structure has evolved. There is relatively little information available from the best sources; this makes all the more remarkable a spate of contentions about the system that in many instances are source-less.

Constitutional reform measures (especially those in the security realm) have been labelled "dangerous" precisely because of the efficiencies they introduce into the system (Grundy 1983, 111)! Another contention is that their "ultimate purpose is to retain and sustain white power" (O'Meara 1984, 105). Professor O'Meara, with undisguised astonishment, notes that "the President will have autocratic power *and will be able to declare martial law*" (p.105, italics mine). Evidently, this presidential prerogative is noteworthy outside its American setting! Simon Jenkins (Political Editor of *The Economist*, London) sees "a stale and introverted oligarchy" in the ascendancy in Pretoria consisting altogether too much of generals "pacing linoleum corridors." He grants that "the generals are by no means hawks," rather they are "pragmatic," "realistic" and, to be sure, "unsophisticated" (Jenkins 1983). (Jenkins can be immediately rebutted on one point: the linoleum was being replaced with carpeting as I moved through the corridors in August 1983!) Grundy contends that the authorities have "co-opted experts . . . eager to sell their services to the regime" ("specialists in control, intimidation and violence"), and that these "professionals" now determine the agenda not alone in defence, but "in areas only remotely linked to security." At the same time he echoes the charge of Jenkins that the NSMS is "militarised," that "the military stands at the hub" of that system and, additionally, that the "militarisation" of South African society is now considerably advanced (pp. 111f.). Finally, Grundy likens the State Security Council (SSC) to the Politburo of the Soviet Union (cf. Sparks 1983). This amounts, in all, to three pejorative and wholly inconsistent allegations, namely that the system is dominated (1) by co-opted experts, (2) by the military, and (3) by the most senior political level!

More judicious than some of his American counterparts, and most assuredly a closer observer, Professor Deon Geldenhuys (Chairman, Department of Political Science, Rand Afrikaans University, Johannesburg) argues that the SSC is *primus inter pares* among these agencies constituting the NSMS. Clearly, it is the keystone agency, but when he underscores his *primus inter pares* argument by stating that the SSC (and other Cabinet Committees) "are empowered . . . to make decisions" he overshoots the mark (Geldenhuys and Kotze 1983, 39). General Andre van Deventer, Chief of the Secretariat and Secretary to the SSC, responded to this specific contention on more than one occasion during his statement to the press in Pretoria on 21 September 1983. He reiterated that the SSC Statute "provides only for an advisory function," but did grant that "with the passage of time adaptations were made to the original concept, and experience has helped to shape the system which obtains today." However, "it has always been the duty of the chairman (the Prime Minister) to take all recommendations and advice of the Council to the Cabinet for further action."

At issue between Professor Geldenhuys and General van Deventer is something more than a semantic problem. Knowledgeable observers of South Africa's NSMS are in general agreement that the SSC (and its support structure) has a considerable participatory role in the formulation of both policy and strategy decisions. Quite a different matter, however, is the question "Who decides?" What any participant in any governmental decision-making process readily appreciates (this might be expected of close observers as well) is that "approval" is the *decision-taking step;*

moreover, the significance of this step lies in the fact that it is *a political step* – not merely the final bureaucratic step. Because "approval" (decision taking) is necessarily "political," participants in the process likewise are appreciative of the fact that the best laid plans often go astray (indeed, they are more often simply laid aside)! Nothing belies the notion that decisions are *made* by *penultimate* levels of government more than this political fact. It is "the management style" of PW Botha to provide for an elaborate (many would suggest an "unduly" elaborate) planning process so that he, not subordinates, can take decisions confident in the process that has ended at his desk. The "political" (and constitutional) dictate under which Mr Botha operates is that the Cabinet that he chairs is the decision-taking body in South Africa.

There is no basis for obscurantism, let alone vituperation, insofar as the role of the generals (the "political generals," if one wants) is concerned. What must be said about them, first of all, is that they are relatively few in number and all quite visible. As of this writing they are: Magnus Malan (Minister of Defence), Constand L Viljoen (Commandant-General, SADF), Jan Geldenhuys (Senior Army Command Officer), Pieter van der Westhuizen (Chief of Military Intelligence), Andre J van Deventer (Secretary to the SSC), and Pieter J Coetzee (Commissioner, South African Police). This half-dozen does constitute an important "influence group" in the NSMS but the role of these men – the nature of their influence – does not appear to be well understood. One of their number recently discussed the matter with me with a candour that many of us associate with general officers. There was no attempt to deny the ascendancy of the six; there was only matter-of-fact explanation. (What follows paraphrases his remarks.) This is, after all, a new situation. There is one reason for it: we have a new PM. The new structure of things has been established to meet his requirements (his "management style"). This, incidentally, is one more development that the right wing does not like about "PW." John Vorster did not like staffs – "PW" does. Vorster did not like working with the military – "PW" does. Yes, I'm on all sorts of committees, delegations and the like because that's what "PW" and "Magnus" want. The notion that the South African military is not subordinate to the political people is nonsense. Before we were rejected by them; today we are co-opted by them! Which of these statuses is the more uncomfortable is hard to say.

Gerard Chaliand of *Le Monde* was among the first of foreign observers to discern that certain generals were playing an "innovative role" in South African politics with the advent of PW Botha. "This role is innovative," he wrote, "because its vision springs from a global analysis and not purely local considerations" *(Le Monde,* 7 Nov 1979:7). Chaliand noted that first among these "political" (his term) generals was Magnus Malan. However, Malan can be described as "political" only in the sense that he has been more sensitive than most of his brethren to the transcendance of the "political" dimension in what South Africans call "revolutionary warfare." He has sought to articulate the phenomena of "revolutionary warfare" and to define within that multi-dimensional realm a "creative role" for the army. His long-time associate, PW Botha, recognised that Malan was capable of doing this more effectively than were the political people. It is Malan who more than anyone else has defined "the total onslaught" and "the total response." When it came to playing a political role (a lead role as Minister of Defence) in the implementation of "the total national strategy," Magnus Malan exhibited all of the discomfiture of a general out of his element. Close friends and associates convey a consensus view: "Magnus" is not right for the role of Minister; he is unhappy – frustrated. He has a distressing American tendency to "overstaff," putting burdens on the operators now far removed from him.

Viljoen and Geldenhuys have been described as "the right men in the right place at the right time" – thus their influence. Geldenhuys while Chief of Southwest Command did more than anyone else to translate the new strategic thinking into operational doctrine. Viljoen – "our soldier's soldier" – made sure that Geldenhuys received the logistical and training support without which "cross-border operations" would have been nothing more than a concept. Enormous obstacles notwithstanding (South Africa's "security power base" tends to be overestimated), the two men have made SADF a premier counter-insurgency force. Reportedly, Viljoen today would like nothing more than to return to his farm – his key assignment accomplished. The influence of the men in the brown uniforms consists, by and large, in their professional proficiency at arms and rather less in their "ideas" (the exception being Malan). None of them can be described as a "political man" in the conventional sense. General van Deventer, for example, is the classic staff officer whose capacity to manage a process (in this case "the national strategic planning process") recommends him for the admittedly critical positions of Secretary to the SSC, Chief of the SSC Secretariat, and Chairman of the Work Committee. Admittedly, also, he will influence the strategy process, more by virtue of strategic location than political colouration and this by virtue of the choice of the prime minister. The case of LTG Pieter van der Westhuizen – described by one fully qualified observer as "the man in the know" – will be taken up in our discussion of the intelligence function; for a summary of the perspectives and concerns of General PJ Coetzee, Commissioner of the SAP, see Coetzee (1983). That the "advisory role" of the SSC is hardly the preserve of the military can be demonstrated by pointing to the role of the Minister of Foreign Affairs and Information, RF "Pik" Botha.

A casual perusal of the SSC membership will show that the Foreign Minister is *not* "the only representative of civilian rule (apart from the prime minister)" (Jenkins, p.20). The SSC is, in fact, civilian-dominated in terms of membership and, no doubt, will become increasingly "civilian" in terms of agenda as the transition from military to political-economic-social phases of "the struggle" proceeds. If there is a commanding figure in the SSC today (1984) – apart from the chairman, always – it is the Foreign Minister with the Minister for Constitutional Development and the Minister for Co-operation and Development not far behind. The effectiveness of "Pik" Botha within the PW Botha entourage may be one of South Africa's best kept state secrets. This has been achieved largely, if unwittingly, through the co-operation of the press and other observers preoccupied as they have been with the military. "Pik" Botha's task, and today his achievement, has been the management of the American connection. This connection, always tenuous if not precarious – frequently questioned by the military – is today established. The engagement of the United States in the political-economic-social issues of southern Africa is a new dimension in regional affairs. The details of the Nkomati Accords make clear that there is far more here than a military settlement with Mozambique – it is a significant "political opening" to the frontline states.[1] RF Botha's "African diplomacy" has brought him to the foreground in the Cabinet and the SSC. While different positions are struck within the framework of the SSC by "representatives" of various groups, the underlying rationale of what is, perhaps, an "unduly" elaborate system, namely a clear policy and a coherent strategy, has been maintained with striking consistency.

DEVELOPING INTELLIGENCE

General Malan emphasised in his 1980 lecture to the Institute for Strategic Studies that the first step in establishing a "national strategic planning process" was to put in place "intelligence machinery" that could "identify and define the different facets of the total offensive waged against the RSA." The "intelligence machinery" in place throughout the 1970s would not suffice, however. The dominating agency throughout the decade was the Bureau of State Security (BOSS) under the dominating presence of General Hendrik van den Bergh. BOSS grew out of the 1970 Potgieter Commission inquiry into "certain intelligence aspects of state security" and went into effect under the mandate of the 1972 SSC Act. BOSS was the intelligence instrument of the Prime Minister of the Republic, BJ Vorster; "Lang Hendrik" van den Bergh was his intelligence confidant and counselor.[2] The relationship between the two men was essentially political in character and would last only as long as John Vorster was prime minister. "Lang Hendrik" retired to his farm in 1978 with the accession of PW Botha. (However, at this juncture his close associate Mike Geldenhuys is made Commissioner of SAP.) Throughout his tenure Van den Bergh was absorbed (with some basis) with the threat of Soviet "penetration" of the Republic. But his most important role, little recognised at the time, was serving as envoy of John Vorster throughout Africa developing "networks" across the continent that directly served the prime minister. That Van den Bergh was a man of no small influence was clear to officials in the government. The closeness of the relationship between the chief political officer and the chief intelligence officer, and the powerful effect of that relationship, was not lost on the then Minister of Defence, PW Botha.

What followed upon the election of Mr Botha to the Office of Prime Minister in 1978 (and the resignation of Van den Bergh) has been described to me as "the battle for the intelligence brief." The rationalisation of the intelligence structure, *inter alia*, was a struggle to gain the Van den Bergh mantle. For his own part, Botha wished to refurbish the image of BOSS, breaking the mould of a personal agency at the disposal of the prime minister. At the same time he was cognizant of the value of having a special relationship with "the intelligence people." His first step was to establish a new division of responsibilities. The National Intelligence Service (NIS), which quickly evolved out of a short-lived Department of National Security (DONS), is not a successor to the Bureau of State Security (BOSS). It is a new intelligence agency with a somewhat restricted charter. The principal mandate, it would appear, is in the area of political/economic (and some would add "social/psychological") intelligence with possibly a counterintelligence role short of the "hands-on" role of SAP.

Since 1982 the NIS and the SSC Secretariat (SSCS) have been "co-located." The implications of this development are not all clear. Geldenhuys and Kotze (p. 40) indicate that the SSCS now "resorts" under the NIS for *administrative purposes* (italics mine); however, SSCS staff are not *professionally responsible* (italics mine) to the Director, NIS. There is some basis for thinking that the NIS may well "resort" under the SSCS! The National Intelligence Interpretation Branch (NIIB) is part of the SSCS and is the highest body for the collation of intelligence. One can reasonably conclude that NIS staff is increasingly given over to the research, analysis and estimate functions of the NIIB. Then there is the matter of the Director of NIS.

Professor Lukas (Nils) Barnard is a "political appointee" of the prime minister, drawn from the University of the Orange Free State. Botha, confronted with political exigencies in the OFS, not to mention the academic community, found it suitable to appoint an academic to head the new intelligence agency with its fairly well defined functions. Barnard makes a point of his academic credentials (including Georgetown University) and has gathered a somewhat academic-oriented group around him. A newcomer to "trade-craft," Barnard suggests that part of his charge is to give further definition to the NIS and its mission. He is especially attuned to what he calls "front organisations" and their activities throughout Africa – to the non-military activities of the Soviet Union on the continent. He is sensitive to US "pressure" on the RSA, on the one hand, and the "isolationist tendencies" of the South African right, on the other. He does not appear to have the Van den Bergh mantle.

"The essentials have been turned over to the Department of Military Intelligence (DMI)." This succinct summary of Botha's intelligence rationalisation was given to me by one close South African observer. The circumstances of DMI indeed differ from those of NIS. It, too, is a component of the South African intelligence community and, as such, an agency of the SSC. There any similarity with NIS ends. DMI staff is not merged with that of the SSCS; it remains within the SADF structure at the disposal of LTG Pieter van der Westhuizen, the principal intelligence professional in South Africa today. DMI is not just the J-3 organisation of SADF; it is not, for example, the counterpart of Defense Intelligence Agency (DIA) in the United States. What distinguishes it from conventional military intelligence agencies is that it has "the strategic intelligence function" normally located with "national agencies" such as Central Intelligence Agency (CIA) in the United States. DMI, not NIS, provides "strategic intelligence input" into "the national strategic planning process" in South Africa. According to Geldenhuys and Kotze "it can justifiably be asked whether these . . . bodies (DMI and NIS) in practice readily convey their sometimes painfully gathered information to the SSCS" (p. 40). There is little point to this question insofar as NIS is concerned; there may be some point where DMI is concerned. The fundamental question that is posed, of course, is whether General van der Westhuizen "has captured the intelligence brief" and has his own channel to the prime minister in addition to lines through the "unduly" elaborate SSC structure. The answer may well be both yes and no.

It is not a map of Africa but a map of the world that takes up an entire wall of the office of the Chief, Department of Military Intelligence (DMI). A confident, frank, engaging soldier, Pieter van der Westhuizen's horizons – intellectual and geo-political – are far-ranging. He is the embodiment of "strategic thinking" that marks the Botha regime and clearly relishes having the "essentials" (strategic/military intelligence) in his jurisdiction. But unlike Van den Bergh, Van der Westhuizen is not a "political" man; he is in every respect the soldier. His "bosses" are Generals Viljoen and Malan; there is the suggestion that where "strategic intelligence" is concerned there is an open line to "Magnus," and where other intelligence matters are concerned to Viljoen. Botha's purpose of incorporating the "strategic thinking" of the military in the "national strategic planning process" has been accomplished through maintaining the co-architect of "total national strategy" in the Minister of Defence portfolio and by his division of responsibilities between NIS and DMI. The arrangement is satisfactory to the latter if not the former. From the soldier's perspective the controlling point is that this is what the PM wants. Access to the prime minister is not an issue for DMI.

General van der Westhuizen displays the "wider Africa" perspective of Smuts: the role of "external powers," friendly and otherwise, on the continent is the focal point of his attention. His knowledge of African militaries and African political leaders (shades of Van den Bergh!) is impressive. He travels widely (not just through Africa), often with the prime minister, knitting together political, economic and military data under the rubric of "strategic intelligence." Today, he emphasises the failures of the Soviet Union in Africa, the transformation of the "threat" in terms of the looming collapse of African states, and the necessity of a stepped up American role particularly in southern Africa. Shortly, African militaries may be the only viable institutions on the continent (except, perhaps, in less than a half dozen countries). The relationships between African militaries and "external powers" will be a crucial dimension of the strategic future. Nigeria looms on Van der Westhuizen's horizon rather differently than it does on "Pik" Botha's. Very much on the mind of the intelligence chief, as well, is the horizontal axis reaching across the Atlantic to the "cone countries" of Latin America in one direction, and through the "western islands" into the Indian Ocean in the other direction. If strategic common ground is to be found with the United States – and this soldier suggests that he values this more highly than some of his brethren – it will be found here. The course upon which he would put South Africa is "outward" – not "inward."

The security power base is one of four pillars underlying South Africa's "total national strategy." The management of that power base is the focal point of this study. But South Africa's "total national strategy" enterprise is not a process confined within formal (governmental) structures. It is an interactive process along formal and informal axes engaging governmental and non-governmental sectors alike. Insofar as the security power base is concerned (the defence sector), its definition, direction, and management is a shared undertaking among those making up the South African "Defence Community" (see Roherty 1980).

Needless to say, government agencies other than those already mentioned are important "actors" in the South African defence community, e.g., Armaments Corporation of South Africa, Ltd (ARMSCOR), Atomic Energy Corporation (AEC) including its subordinate agencies (Uranium Enrichment Corporation and Nuclear Development Corporation), South African Transport Services (SATS), and the Council for Scientific and Industrial Research (CSIR). Outside the public sector the list of participants in the defence community grows steadily; without detailing this list two broad developments need to be underlined. The prime minister's interactions with the business sector (especially the upper reaches of the corporate structure) are extensive and are designed *inter alia* to make that sector part of the defence community. Something more of a departure from the practice of his predecessors is Botha's enlistment of elements of the academic community in government. Lacking a tradition of moving in and out of government, a number of South African scholars are today making significant contributions to the "total national strategy" effort (see Roherty 1983).

There are mixed views within both government and the business sector concerning the contribution South Africa's "free enterprise system" is prepared (or able) to make to the "total national strategy" of PW Botha. The historic fissure that has divided "Brit" and "Boer" runs through the business community. There are signs that this divide is narrowing and that it may be less of a problem today than the gap between prominent corporate leaders (both Brit and Boer) at the top of the business structure and the larger middle and lower echelons of South African businessmen. The latter are notoriously "all-business" (apolitical), or, where political colouration surfaces, inclined to the far right. There is marked political sensitivity, however, on the part of the major corporate leadership. It is this cadre of men that is crucial to the prime minister's "total national strategy." These men must not only provide business acumen and managerial talent if Botha is to be successful, they must, in a word, steer the business community in accord with both the domestic and international thrusts of the current strategy.

The academic community in South Africa is not large in number by western standards but it does exhibit a sensitiveness if not polarisation that goes well beyond what one finds in the West generally. Some of this stems from the fact that increasing numbers of South African academics, at first more among the physical and engineering sciences and more recently among the social sciences and professional school faculties, have developed both formal and informal ties with the Botha regime. Today one can point to a significant body of scholars in South Africa whose major concern is with "strategy" in its many intellectual and practical dimensions. They do not, together, constitute a single school; not all of them have ties (formal or informal) with the Botha regime. However, it is possible to identify the outlines of a "Contemporary School" of strategic analysis in South Africa, prominent exponents of which are engaged in the "total national strategy" enterprise of PW Botha.

A study in depth of the South African defence community would show an extensive interactive network linking government, industry and the academy. The development, explication, and implementation of Botha's "total national strategy" goes well beyond its architects and the formal structure that has the State Security Council (SSC) at the apex. The prime minister's success to date is, in no small part, due to the fact that he has made this enterprise a national one.

NOTES

1. This was confirmed at Arusha (Tanzania) at the end of April when the frontline presidents meeting under the aegis of President Julius Nyerere approved both the Nkomati and Lusaka Accords. These developments, according to Alan Cowell, yield an insight into South Africa's "ambitions and self-confidence" that only a few years ago would have been "unthinkable" (*New York Times*, 13 March 1984: 1). As late as July 1983 Simon Jenkins saw growing South African "self-confidence" as a "massive obstacle" to accords with Mozambique and Angola (p. 27).
2. Among "outsiders" Carel Birkby perhaps knew General van den Bergh best: see Birkby 1978. Birkby notes in passing the significance of the role of Van den Bergh's "highly confidential" secretary, Breggie de Jaeger; he is not the only observer of the South African security system to call attention to the proficiency of its confidential secretaries.

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THE INDIAN AND COLOURED ELECTIONS: CO-OPTATION REJECTED?

Anthony Lemon

THE FIRST elections for South Africa's new tricameral parliament took place on 22 Auguss for the House of Representatives (coloured) and 28 August for the House of Delegates (Indian). The life of the existing House of Assembly (white), elected in 1981, has been extended to eight years instead of five, so that the next General Election for all three Houses need not be held until 1989.

The Labour Party of the Rev Allan Hendrickse won an overwhelming majority of 76 of the 80 elected seats in the House of Representatives. The Indian elections, however, produced an indecisive result with the National People's Party of Amichand Rajbansi winning 18 seats and the Solidarity Party of Dr JN Reddy 17, a situation that led to much negotiation and several changes of allegiance as each party tried to construct a working majority (see below). These results were overshadowed by low percentage polls of 30% of registered electors for coloureds and 20% amongst Indians. The new constitution had been approved by a 66% majority in a referendum amongst whites in November 1983, but in the absence of similar referendums amongst Indians and coloureds themselves, the elections inevitably became a test of the acceptability of the new dispensation, or at least the merits of participation. The ensuing debate between boycotters and participants tended to eclipse all other campaign issues.

To understand the nature of this debate, it is necessary to outline the major provisions of the new constitution. Two aspects of the electoral machinery, the delimitation of constituencies and the registration of voters, will then be considered. Attention will then be focussed on the competing political parties and the composition of the boycott movement, as a background to the analysis of national and regional voting patterns that follows. Finally, some implications of the election results for the operation of the tricameral parliament will be discussed.

PROVISIONS OF THE NEW CONSTITUTION

According to the Constitution Act No 110 of 1983, representation in the three chambers of parliament is broadly proportionate to existing population numbers (see Table 1). No mention is made of an adjustment of these ratios to reflect differential growth rates, which would be to the disadvantage of the almost static white population.

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TABLE 1: COMPOSITION OF THE TRICAMERAL PARLIAMENT

	House of Assembly	House of Representatives	House of Delegates
Directly elected	166	80	40
Nominated by the President	4	2	2
Elected by directly elected members, by proportional representation	8	3	3
TOTAL	178	85	45

A similar 4:2:1 ratio applies to the electoral college that elects the State President: it consists of 50 members of the House of Assembly, 25 from the House of Representatives, and 13 from the House of Delegates. In each case these members are designated by resolution, which effectively means that all will be members of the majority party in the House concerned. The majority party in the House of Assembly therefore controls the election of the President and PW Botha, the National Party candidate, was duly elected as the first executive State President and installed on 14 September 1984.

The constitution makes a crucial distinction between the "own affairs" of each population group and "general affairs." The former include, with qualifications, social welfare, education, art, culture, recreation, health, housing, community development, local government, agriculture and water affairs. Each House will control these matters for its own people, with the major constraint that budgetary allocations fall outside its sphere of responsibility, since finance is classified as a "general affair." Questions of interpretation over what constitutes "own affairs" will be decided by the State President, whose decision will be final.

There will be a Ministers' Council for each population group and a cabinet consisting of the State President and Ministers appointed by him to administer departments of state, or otherwise designated by him. The spirit of the constitution arguably demands a multiracial cabinet drawn from all three Houses, but no quotas are specified. During the 1984 election campaign it was widely assumed in the press that at least one and possibly two coloureds, and one Indian, would be appointed in the first instance (see below). Executive authority for "own affairs" is vested in the State President acting on the advice of the Ministers' Council in question. For "general affairs," executive authority is vested in the State President acting in consultation with the cabinet.

The constitution also provides for a President's Council of 60 members. The Houses of Assembly, Representatives and Delegates designate 20, 10 and 5 members respectively. The State President nominates the remainder, including 10 persons nominated by the three Houses (6, 3 and 1 respectively) who are supporters of opposition parties in each House. In the event of unresolved disagreement between the Houses over a bill concerning "general affairs," the State President may refer the bill (or different versions of it that have been passed) to the President's Council for decision. If the President's Council approves such a bill, it will be deemed to have been passed by parliament.

To aid the three Houses in reaching consensus, joint standing committees will meet to discuss "general affairs" prior to the second reading debates in the respective Houses. Joint rules and orders for these committees, which will be vital to the functioning of the new system, are not laid down in the Constitution Act, but were approved by the white parliament in the final hours of its existence. Opposition parties in each House may be represented on joint standing committees, but Rule 12 states that resolutions of such committees must enjoy majority support from standing committee members of the majority party in each House (*Cape Times*, 11 Aug 1984).

Joint sittings of the three Houses may be called by the State President, but no resolutions may be passed on such occasions, which are likely to be largely ceremonial in character.

The Constitution makes provision for the absence of members of a given House, or failure to perform the functions of their office. In this eventuality, parliament would simply consist of the remaining House or Houses.

IMPLICATIONS OF THE CONSTITUTION

Two aspects of the new constitution are perhaps most fundamental. The first is of course the exclusion of blacks, who constitute 73% of South Africa's population. The extension of voting and other rights to blacks was not precluded by the old constitution *per se*. Second, the Population Registration Act, which is the basis for group differentiation (and therefore the keystone of apartheid), enjoys constitutional entrenchment for the first time, whilst the practicality of the "own affairs" concept rests on the Group Areas Act, which provides for residential segregation. In these respects the constitution has been attacked as a major reinforcement of apartheid, and those urging a boycott of the elections were at pains to dismiss the view that it was "a step forward."

The tricameral arrangement and the preclusion of voting at joint sittings are clearly designed to prevent a liberally inclined white minority, such as the Progressive Federal Party, combining with Indian and coloured MPs to outvote a National Party government. The voting conditions to be applied to the Joint Standing Committees will have the same effect. In this sense the constitution is apparently designed to *avoid consensus* of a kind deemed undesirable by its architects.

Although ostensibly giving equal representation to individuals of the three recognised population groups, the constitution is so structured that the State President will inevitably be the nominee of the majority party in the House of Assembly. His ability to decide what constitute "own" and "general" affairs, and which measures should be passed to the President's Council in the event of disagreement between the Houses, gives the President a degree of power that is incompatible with a truly consociational democratic system (on the theory of consociational democracy, see Lijphart 1977; on the South African background, see Vosloo 1977). In effect measures concerning "general affairs" could become law with the assent of one House, the President's Council and the President himself: thus the Houses of Representatives and Delegates could be overruled. Parliament could also continue to operate in the event of a boycott of both these Houses. The functions of the latter do include a substantial measure of autonomy over "own affairs," but within critical financial constraints and a framework of group differentiation imposed by whites.

Given these and other limitations, those campaigning for a boycott of the elections argued that the powers granted to the Indian and coloured Houses were worthless, and that those elected to the tricameral parliament would merely become partners in the enforcement of apartheid.

THE DELIMITATION OF CONSTITUENCIES

The distribution patterns of coloured and Indian population are quite different from those of whites, and this, together with the smaller numbers of MPs to be elected, necessitated a new delimitation of constituencies. The Delimitation Commission was appointed on 1 March 1984 and its report was published three months later (*Government Gazette* vol 228 no 9253 of 11 June 1984: 1-220). Two major sources of representational inequality are apparent: one deriving from the constitutional provisions relating to provincial allocation of seats, the other from the inaccurate population register on which the Commission was obliged to base its delimitation.

The Constitution Act (sections 42 and 43) embodies a fixed provincial allocation of directly elected members. The effect of this is to give considerably greater weight to the votes of coloured and Indian minorities living outside the Cape and Natal respectively. Thus Cape constituencies for the House of Representatives had, in the Commission's reckoning, a provincial quota (average electorate) more than four times as large as that of the Orange Free State seats. Other inequalities, whilst smaller than this, remained substantial.

TABLE 2: PROVINCIAL QUOTAS

House	Province	Voters	Constituencies	Quota
House of Representatives	Cape	853 175	60	14 219
	Natal	43 029	5	8 605
	OFS	17 364	5	3 472
	Transvaal	107 153	10	10 715
House of Delegates	Cape	12 311	3	4 103
	Natal	261 573	29	9 019
	Transvaal	56 086	8	7 010

Source: *Government Gazette* vol 228 no 9253 of 11 June 1984:5

These inequalities repeat patterns established earlier in the allocation of seats for the Coloured Representative Council (CRC) and South African Indian Council (SAIC). Provincial quotas for the former were even more unbalanced than those for the House of Representatives (Cape 16 116, Natal 5 858, OFS 2 615, Transvaal 6 705: *Argus* and *Cape Times*, 8 May 1969; corresponding figures for the 1979 delimitation of Indian constituences for the SAIC were Natal 8 352, Transvaal 3 615, Cape 2 176: *Government Gazette* vol 169 no 6593 of 20 July 1979). No justification for the present imbalance is offered in the Constitution Act, but the motives are not difficult to guess. If the same quotas had been applied throughout the country, vast constituencies would have been necessary outside the Cape (coloureds) and Natal (Indians). They would have included widely separated urban communities as well as scattered, largely coloured, rural population, and it would be difficult for a single MP to represent such a constituency effectively. Such problems affect any delimitation of constituencies, but they are inevitably aggravated when three delimitations are required for a population living in the same geographical territory.

Political considerations may also have contributed to the provincial allocation of seats, insofar as the smaller and more dispersed pockets of Indians, and more especially coloureds, were likely on past performance to prove more subservient and conservative in their voting behaviour. This will be further discussed in relation to the election results.

The population register on which the delimitation was based was deficient in two respects. First, it greatly underestimated the number of eligible voters. The Commission's figures (Table 2) give totals of 1 020 721 eligible coloured voters and 329 920 Indians, whereas the government's own estimates of eligible voters towards the end of the registration period, only six months later, were 1 500 558 coloureds (*Cape Times*, 2 Aug 1984) and 519 471 Indians (*Daily News*, 3 July 1984). Unofficial figures calculated by Stellenbosch University's Unit for Futures Research suggest an even higher number of eligible coloured voters: 1 578 771 in June 1984 (*Cape Times*, 2 Aug 1984).

Such underestimation of numbers would not in itself affect the delimitation had the shortfall been evenly spread, but this was far from the case. In addition, the Commission notes that

> At its public sessions it was repeatedly brought to the Commission's attention that the population register did not reflect the true state of affairs relating to sparsity or density of population in any given area; from areas in which there are, according to the register, reasonably large numbers of voters, the population in question has in many cases totally or largely withdrawn; in other cases the opposite has taken place and areas in which, according to the register, there are no or only small numbers of persons entitled to vote, have become densely populated. (*Government Gazette* vol 228 no 9253 of 11 June 1984: 6)

Technically, as the Commission is at pains to point out, "this state of affairs . . . is entirely ascribable to failure on the part of those whose names appear on the register to give notice of their change of address" (ibid). It nonetheless produced some glaring representational inequalities. In Durban, the Indian population of Chatsworth is known to be declining, as many people leave this area to settle in the rapidly growing new residential area of Phoenix. The result is that the Chatsworth area, with a population of about 300 000, of whom rather more than half are probably eligible to vote, is divided into eight constituencies, whereas Phoenix, with 125 000 people and an estimated 60 000 eligible voters, is a single constituency (estimates by Dixon Perumal, Electoral Officer for Natal). Likewise, the number of eligible voters in the Cape Peninsula (506 442: *Cape Times*, 24 Aug 1984, based on the work of E Patel of the Southern African Labour and Development Research Unit, Univ of Cape Town) was more than double the number on which the delimitation was based (224 431). This led to the Peninsula receiving only 33% of the Cape seats available, whereas it had 38,3% of eligible voters. Given the unequal provincial quotas already noted, this coloured "heartland" was thus doubly disadvantaged.

THE REGISTRATION OF VOTERS

The elections were bedevilled by problems of registration and inaccurate voters' lists. For coloureds, the only lists available to the Delimitation Commission were those used for the last CRC elections in 1975, which were hopelessly out of date. Of the 907 106 coloureds officially registered for the House of Representatives election, only 26% had actually registered during 1984 (*Cape Times*, 2 Aug 1984). Of the rest, large numbers had moved to a different area or died, whilst some would undoubtedly have chosen not to register anew in 1984 had the voters' rolls been compiled afresh. Despite this, those officially registered constituted only 57,5% of eligible voters (figures based on the Stellenbosch population estimate). Indians, perhaps more conscious of the legal requirement to register, did so to the extent of 79,2% of those eligible. The number of registered Indian voters increased from 299 898 on 30 April 1984 to 425 966 (*Daily News*, 3 July 1984), but this figure was officially revised to 411 654 shortly afterwards owing to the removal of at least some duplicate registrations (*Cape Times*, 13 July 1984).

Numerous complaints about the inaccuracy of the voters' rolls were made by both candidates and boycotting organisations, particularly in relation to the House of Representatives elections. In the Eersterus (Pretoria) constituency it was reported that 75% of the names on the roll could not be traced (*Star*, 9 Aug 1984). In the Witwatersrand constituency of Reiger Park, the United Democratic Front described the voters' roll as "fake," claiming duplicate and even triplicate registrations and the inclusion of people who died up to five years before; the electoral officer for the constituency admitted that the roll contained many errors (*Cape Herald*, 18 Aug 1984). The voters' roll for Table Mountain constituency included 1 000 "ghost voters" from District Six who were removed more than fifteen years previously when this part of Cape Town was zoned for white occupation (*Cape Times*, 11 Aug 1984). An Independent candidate for Central Rand likewise said that 500 voters on the roll had moved from Pageview when this Indian area had been declared white (*Star*, 10 Aug 1984). Candidates for Durban Suburbs and Wentworth claimed to have found 600 names of people known to have registered missing from their voters' rolls (*Natal Post*, 1-5 Aug 1984). The Solidarity candidate for the House of Delegates constituency of Stanger made a similar claim in respect of 100 voter registration forms that he had handed in (ibid).

The leader of the (coloured) People's Congress Party, Peter Marais, called on the government to "scrap the elections" until an accurate voters' roll for the House of Representatives could be provided (*Cape Times*, 8 Aug 1984). The United Democratic Front sought legal advice on challenging the Reiger Park voters' roll, whilst another anti-election organisation, Azapo (the Azanian People's Organisation), threatened to follow suit in other constituencies (*Cape Herald*, 18 Aug 1984). Such challenges were nullified, however, by the Electoral Amendment Act of March 1984, in terms of which not even the Supreme Court can declare voters' rolls invalid.

Surprisingly, it appears that until the end of May the government did little to increase voter registration, apparently expecting the parties to do this, until pressure from the latter (and from Solidarity in particular on the Indian side) encouraged the government to make use of the media to encourage registration. Professor Willem Kleynhans described the voters' rolls as "a political crime," pointing out that many candidates received the roll only four or five weeks before polling day and most had neither funds nor machinery to trace missing voters (*Star*, 9 Aug 1984). The whole process of delimitation and registration does appear to have been unduly rushed, and it is difficult to disagree with Kleynhans's view that the Delimitation Commission should have been allowed to sit for a longer period, during which all the voters' rolls could have been updated and new lists could have been made available to competing parties three months before the election.

THE PARTICIPATING PARTIES

Of the nine political parties that contested the elections (five Indian and four coloured), only the Labour Party (LP) and the tiny National Federal Party (NFP – Indian) had fought an election before. The National People's Party (NPP) had controlled the South African Indian Council since the first elections for that body in 1981, but the party itself was formed *after* the election by Amichand Rajbansi, chairman of the previous (nominated) Indian Council, who drew together a number of Independents and two members of the NFP. The LP, in contrast, had won convincing majorities of elected seats in the CRC in both 1969 and 1975, and had controlled the CRC from 1975 until its dissolution in April 1980. The party therefore included a number of veteran politicians including its leader, Rev Allan Hendrickse, its former chairman and the chairman of the Association of Coloured Management Committees, David Curry, and the Transvaal leader, Jac Rabie. In the 1984 campaign, the LP posed a challenge to the government by opening its ranks to Indian members, contrary to the Prohibition of Political Interference Act, and putting up candidates in several Indian seats (officially labelled "Independents"), mainly in the Transvaal. Altogether 206 candidates contested seats in the House of Representatives, including 32 Independents. The 167 candidates nominated for the House of Delegates included 76 Independents, who by virtue of their number became a potentially significant but uncertain element in the campaign.

The *Labour Party* contested all 80 elected seats for the House of Representatives, and was unopposed in four of them. Its strength lay in its long existence and its history as an intractable opponent of apartheid. It had forced the collapse of the CRC by means of mass resignation in February 1980, and its refusal to co-operate in a proposed nominated Coloured Persons Council led PW Botha to abandon this idea later the same year. At its January 1983 congress the Labour Party decided overwhelmingly to participate in the new dispensation, despite being urged not to do so by Chief Gatsha Buthelezi, chairman of the South African Black Alliance (SABA), from which the party was suspended and subsequently resigned. The decision to participate was consistent with Allan Hendrickse's long-held stance of using any device or structure created by the government to dismantle apartheid. It was, however, strongly opposed by the Cape Housing Action Committee, representing 22 civic associations in the western Cape, and by trade unions who saw it as undermining the unity built up between workers of different races (Cooper 1984, 30-1). A nationwide campaign to explain the decision was cut short in April 1983 after strong opposition and some violence. Allegations that the LP had shed much of its support, especially in the western Cape, were given some substance by the extremely low polls recorded in subsequent management committee elections where LP members stood for election.

Labour's awareness of such a loss of support may well have influenced its critical decision not to demand a coloured referendum on the constitution. This, and the party's initial decision to participate, were crucial to the launching of the new dispensation; without the participation of the LP, it is difficult to see how the government could have proceeded with any credibility. This being so, the party could arguably have demanded concessions as a condition for its participation, but, with the exception of a compromise that effectively allowed it to flout the Prohibition of Political Interference Act, it failed to do so, at least in public.

Despite this background, the party's experience enabled it to fight much the strongest campaign for the House of Representatives. The powerful speakers available to the LP enabled it to stage major public rallies. The political experience of its leaders enabled the LP to devote attention to matters outside the ambit of education and housing, the major "own affairs," which were the main concerns expressed by most rank-and-file candidates in all parties, coloured and Indian alike. More clearly than any other coloured party, Labour stressed its intention of fighting for full citizenship rights for all South Africans. Its manifesto demanded the freeing of the economy from legal constraints and regulation, and the repeal of all segregation laws arguing that social relationships were best regulated by social conventions and individual attitudes. The manifesto attacked the new constitution for its exclusion of blacks and entrenchment of ethnicity, stressing Labour's demand for and belief in a one-man-one-vote, unitary system, although the unitary aspect was "negotiable." The LP's participation in the new dispensation was conditional: Allan Hendrickse declared that he would give the new constitution five years to produce sufficient progress, failing which his party would withdraw.

The main opposition to the LP came from the *People's Congress Party* (PCP) of Peter Marais, a member of the Prime Minister's Economic Advisory Council. The party had grown out of the Congress of the People formed in September 1980, which became a political party in 1981 and was renamed the PCP in January 1983, when Marais was elected Cape leader. In December 1983 he called for "aggressive participation" in the constitution in order to improve living standards in the coloured community (*Star*, 16 Nov 1983), and this became the main thrust of his campaign message, stressing bread and butter issues and seeking to unleash the forces of coloured nationalism. He refused to be part of any movement that would lead to Africans gaining power, and attacked the United Democratic Front as "the biggest destroyer of coloured youth. They lead them up the garden path and show them paradises which do not exist" (*EP Herald*, 20 Aug 1984). Marais addressed 85 meetings across the country during the election campaign and proved to have a folksy style of politicking with considerable appeal, but his party had few other prominent or experienced figures, and limited organisation. Largely a Cape-based party, with close links to the Griqua people, it experienced difficulty in finding suitable candidates in many areas, especially the Orange Free State, but managed to field 59 candidates overall.

The *Freedom Party* (FP) had grown out of the old Federal Party, which had appealed to more conservative voters, particularly in rural areas, in the 1969 and 1975 CRC elections (see Whisson 1971, 48-9). The FP was led by Charles Julies until early 1984, but when the latter was ousted by Arthur Booysen, the present leader, he broke away and founded the *Reformed Freedom Party* (RFP). The FP fought all ten seats in the Transvaal, its regional base, but only 14 elsewhere; these were largely the more rural constituencies and included only two in the Cape Peninsula. The RFP fielded only 11 candidates all told, and probably dashed any chances it might have had by advocating military conscription for coloureds, something to which the LP and PCP were vehemently opposed. Both the FP and RFP were weak in organisation and resources, and conducted a low-profile campaign.

The election campaign for the House of Delegates was largely a battle between the National People's Party, seasoned by its control of the Indian Council, and Solidarity, led by Dr JN Reddy. Despite its formation only a few months before the election, Solidarity was able to contest all 40 seats, whilst the NPP contested 38. The Transvaal-based Progressive Independent Party (PIP) contested eight seats, including all three in Lenasia (Johannesburg), the National Federal Party (NFP) three and the Democratic Party two. The SAIC became an elective body only in 1981, thus party politics are relatively unfamiliar to the Indian community. This was reflected in the ease with which candidates defected to other parties after the promise of a seemingly more hopeful seat (a phenomenon by no means absent, however, amongst coloureds). Such disaffections might be seen as typical of a "village politics" mentality pervasive in the Indian community, or they could be viewed as evidence that attractive parliamentary salaries were the prime motivation. The large number of Independent candidates could be interpreted in similar terms. They included many with some claim, however slight, to community service or group leadership, who were encouraged to try their luck at the polls. Some stood as Independents after failing to secure nomination for a registered party. A number were former NPP members who had differed with Rajbansi, usually on small issues. Still others were wholly new to politics, some of them undoubtedly attracted by the R43 000 annual salary. The large number of Independents was thought likely to boost the percentage poll, and resulted in up to nine candidates standing in certain constituencies, some of them doing little or no campaigning.

The *National People's Party*'s longer experience was a double-edged sword. The SAIC lacked legitimacy after its election in 1981 on a 10,5% poll, which included a large number of spoiled papers. The NPP's record on the SAIC was far more ambivalent than that of Labour on the CRC, and with the delegation to the SAIC of powers over Indian education and social welfare the NPP had been strongly criticised for its handling of these matters. The Teachers' Association, for instance, had rejected any collaboration with the SAIC on the grounds that it was a government-controlled body with no professional skills (Cooper 1984, 39). Rajbansi was personally distrusted by many for his handling of education in particular. His stance, and that of the SAIC, on the need for an Indian referendum on the constitution had been unclear and inconsistent; later Rajbansi blamed Solidarity for having "convinced the government that a referendum would be a waste of time and money" (*Star,* 16 July 1984), but this ignored the negotiating strength of the NPP and the SAIC in the months before Solidarity even existed.

Despite these shortcomings, the NPP entered the election campaign as the established Indian party with superior grass-roots organisation, and soon demonstrated the effectiveness of its special vote machinery. (A special vote may be cast in advance of an election by an elector who through illness, old age, absence from home on polling day or other genuine cause is unable to reach the polling booth.) It fought a less open campaign than Solidarity, holding far fewer public meetings, and thus tended largely to escape open confrontation with boycott supporters.

Personalities were more important than parties and policies in the Indian elections. Both the NPP and Solidarity produced manifestos which, given the known needs of the Indian community, were similar in their material aspirations. In education, the NPP stressed equal, compulsory education for all and the elimination of separate schools and universities, whereas Solidarity, clearly with the SAIC's record in mind, demanded "no political interference in the administration of professional matters, e.g. education and social welfare" (Reddy 1984). The NPP demanded the repeal of the Group Areas Act, although in a speech Rajbansi referred to the more limited aim of creating "grey areas" open to all races (*Daily News,* 20 Aug 1984). Solidarity contented itself with the perhaps more attainable aim of more land and houses at reasonable prices. The NPP mentioned individual rights to the protection of life, liberty and property, and access to the judiciary in defence of these rights, as well as freedom of the media and freedom of expression. Solidarity's manifesto had a more economic emphasis, reflecting the concerns of Dr JN Reddy, its leader (see below), and advocated the encouragement of economic growth through foreign investment and "the removal of all racial constraints in the free enterprise system" (Reddy 1984).

On one crucial point the approaches of the two parties were very similar. The NPP demanded "the elimination of discrimination and the sharing of power by all citizens, but with safeguards against domination and oppression" (*Star,* 24 Aug 1984), whilst Solidarity advocated "peaceful change towards a just and democratic society with safeguards for minorities" (Reddy 1984). That both major Indian parties should mention safeguards has an obvious significance, coming from a 2,8% minority group in the population.

For a party so recently formed, *Solidarity's* status as a serious contender in the election was remarkable. Its strength depended upon the calibre of its leadership and of many of its candidates. Unlike the NPP, Solidarity attracted a small group of the Indian intelligentsia, which was otherwise more associated with the anti-election Natal Indian Congress. For a new party, Solidarity's finances were also less problematic than might be expected, owing to the affluence of some of its supporters. Its organisation was effective in Natal, but far less so in the Transvaal, where its leadership was poor; however, the NPP was weakly established there as well. Solidarity also had problems in the Cape, with only a handful of spare-time workers and widely scattered Indian communities in three large constituencies. In Natal, the party was helped by control of one of the three weekly Indian newspapers, *The Graphic*, by its chairman, Pat Poovalingam. The latter had gained credibility as a leader by keeping a promise to resign from the President's Council if blacks were not included on it within a year. During the 1984 election campaign he promised, like Allan Hendrickse, to give the new constitution a five-year trial (*Daily News*, 10 Aug 1984).

Unfortunately, Poovalingam was considered somewhat aloof and remote from the people, an important failing given the personal nature of Indian politics. This was certainly not true, however, of Dr JN Reddy, whose stature and economic abilities were admitted to the author even by his opponents. He had founded the New Republic Bank and chaired it for seven years; was on the Natal board of the Standard Bank; a member of the Prime Minister's Economic Advisory Council; and a director of many companies. He relinquished many of these business interests to lead Solidarity. His speeches were such as to establish him as a potential national leader, beyond the confines of "own affairs." Thus he outlined plans for industrial diversification, concentrating on export industries and more processing of South Africa's raw materials; he stressed the development of the informal sector; he emphasised the role Indian businessmen could play in the Tugela Basin; and he stressed the need for peaceful change and economic strength in South Africa in order to provide the employment opportunities needed by Indians, coloureds and blacks (*Graphic*, 10 and 17 Aug 1984). An articulate advocate of constructive participation in the new dispensation, Reddy was undoubtedly an indispensible asset to Solidarity.

THE BOYCOTT CAMPAIGN

The boycott movement was spearheaded by the *United Democratic Front* (UDF), a nonracial body launched in July 1983 in response to a call from Dr Allan Boesak, President of the World Alliance of Reformed Churches, when addressing the Transvaal Anti-SAIC Committee (TASC) six months earlier. By late 1983 the UDF had some 100 affiliated bodies, most of them in coloured areas, but it grew dramatically during 1984 and claimed 600 affiliates during the election campaign. As a front rather than a formal organisation, it does not make policy for its affiliates, which take up UDF campaigns in ways suited to their own activities and constituencies. Affiliates that played a leading role in the anti-election campaign included the *Natal Indian Congress* (NIC), *Transvaal Indian Congress* (TIC), *Cape Action League* (CAL), and to a lesser extent the United Committee of Concern, based in Natal, and the Johannesburg Democratic Action Committee. The NIC had been effectively silenced by a spate of bannings in the 1970s, but was revived from 1978 onwards and was active in the school boycotts of 1980 and the anti-SAIC election campaign in 1981. The TIC was revived at the January 1983 meeting of the TASC. Both the NIC and TIC share the same principles and had been federally united in the South African Indian Congress, but this body has not yet been resucitated. The CAL, which played a crucial role in the Cape Peninsula, was originally founded to oppose the Orderly Movement and Settlement of Black Persons Bill, but was renamed in August 1983.

The UDF and its affiliates organised many anti-election rallies during the campaign, most of them far better attended than the meetings of political parties. The major events included a Cape Town rally in early August attended by over 4 000 people; rallies later the same month in Cape Town and Johannesburg to celebrate the first anniversary of the UDF, attended by over 6 000 and 3 000 respectively; the NIC 90th anniversary celebrations attended by 8 000 people; and a Port Elizabeth rally of "several thousand" people at which Allan Boesak said he would "pray for the downfall of the government" as it proceeded to implement a constitution that "undermined the essence of human dignity" (*EP Herald*, 21 Aug 1984). Such public occasions were complemented by house-to-house visiting, especially in Natal, where the NIC attempted to visit every Indian home to urge people not to vote, and the United Committee of Concern managed to visit 23 000 coloured homes (*Leader*, 24 Aug 1984). Whilst rejecting the use of "boycott" candidates who would refuse to take up their seats, the NIC did employ "counter candidates" to spearhead its campaign in each constituency; all, it claimed, had records of community service which outstripped those of the candidates standing (*Daily News*, 2 Aug 1984).

Given so many meetings and such a diversity of organisations, it is impossible here to give more than a generalised idea of the arguments advanced. The constitution was attacked above all for its exclusion of Africans and its entrenchment of ethnicity. The danger of participation leading to increasing racial bitterness, and therefore violence, was stressed. George Sewpersadh, the NIC president, argued that "the people going in . . . have no history in the political struggle outside the government institutions. They have no mass support. They have not worked with the people, and by going in, they are making it easier for the government to entrench apartheid" (*Natal Post*, 1-5 Aug 1984). The constitution was seen as another version of "divide and rule," which the National Party had practised so successfully in the past. It was attacked for the absence of real powers it conferred on Indians and coloureds, who were being offered a "second class vote" ("Terror" Lekota, UDF publicity secretary quoted in *Star*, 19 July 1984) and "a room next door" rather than genuine seats in parliament (Cassim Saloojee, TIC publicity secretary, ibid). The participants were attacked as primarily self-seeking, and for making promises to the electorate that they would have no means of fulfilling; in practice, coloureds and Indians would receive only "crumbs," in return for helping the National Party to entrench white domination. Dr Fatima Meer, a prominent NIC intellectual, said that despite the Labour role in the CRC, the living conditions of coloured people had deteriorated (*Daily News*, 13 Aug 1984). Denis Hurley, the Roman Catholic Archbishop of Durban, described the constitution as "a consolidation of apartheid under a camouflage of power sharing"; there was no evidence "of a serious intention to begin power sharing, to offer even a significant beginning of real political participation" (*Star*, 15 Aug 1984). Black organisations repeatedly attacked the participants' claim to speak for them in parliament as paternalistic and insulting, ignoring the expressed intention of the LP, NPP and Solidarity to fight within the system for black political rights.

The long-term alternative offered by the UDF and the Indian Congresses was seldom clearly spelt out in public, apart from references to the Freedom Charter. In practice, the strategy appears to be to follow up a successful boycott of the elections with continued pressure at both local and national levels, using every opportunity, until the government is forced to accept genuine negotiation in the forum of a National Convention. The participating parties regarded this as unrealistic, arguing that boycotts had achieved little in the past.

A number of other anti-election organisations must be mentioned. The first *National Forum* was held in June 1983. This organisation is based on the black consciousness principles of Azapo and excludes whites, whose participation in the UDF it opposes. It also rejects the concepts of "Indian" and "coloured" people, regarding them as blacks. At the second National Forum in Lenasia in July 1984, delegates from some 200 organisations met to plan strategies for the wrecking of the elections. The direction of the NF is more radical than that of the UDF, although some of the latter's affiliates are also prominent in the NF, especially the Cape Action League.

At the other end of the political spectrum of boycott were *Inkatha* and the Indian *Reform Party* of YS Chinsaamy, the leading members of the South African Black Alliance after the departure of the Labour Party. (The only other member of SABA is the governing party of the KaNgwane homeland, the Inyandza National Movement.) Chinsaamy had ddscussions with Dr Reddy (a former vice-chairman of the Reform Party) about joint participation in the elections. Chinsaamy was deterred, however, by Chief Buthelezi's hostility to participation, and put his party's membership of the Black Alliance first; Reddy subsequently became leader of Solidarity. The Reform Party had limited formal organisation, but might have done well had it chosen to participate. Chief Buthelezi himself was a powerful opponent of the new dispensation, attacking it as an insult to Africans and warning Indians not to vote.

A host of other organisations and individuals lent strength to the boycott movement. Trade union organisations such as CUSA (the Council of Unions in South Africa) and individual unions, whilst not usually affiliated to the UDF given the danger of dividing their members, supported its stand, and leading unionists participated in its rallies. SACOS (the South African Council on Sport) expressed fears that sport would be seriously threatened by the new dispensation and actively campaigned for a boycott. Many student and youth organisations did the same, and their members boycotted lectures and classes on election days or for more extended periods. The many religious bodies opposing participation included not only Christian organisations such as Diakonia (the Durban Ecumenical Agency) and the Alliance of Black Reformed Churches, but also the Islamic Council of South Africa and the Moslem Youth League. However, the Jamiatul Ulema Natal, a body of Muslim theologians, left the matter to individual conscience. The major Hindu organisations took no stand, and both the president and secretary of the South African Hindu Maha Sabha contested seats in the House of Delegates (*Leader*, 24 Aug 1984).

THE ELECTION RESULTS: NATIONAL AND REGIONAL PATTERNS

The election gave almost unchallenged control of the House of Representatives to the Labour Party, with 76 of the 80 seats; the PCP managed to win only a single seat, whilst Independents took two and in the final seat there was a tie between the LP candidate and Arthur Booysen, the Freedom Party leader. Labour's victory in terms of votes was also convincing: it received 73,2% of the total poll. In the House of Delegates, however, the NPP and Solidarity received virtually the same number of votes (36,6% and 36,5% respectively). The NPP, with 18 seats to Solidarity's 17, subsequently managed to construct an overall majority by winning over three of the four Independents (one of them the only LP-backed Independent to succeed). The PIP, with one seat, was the only other party to gain representation. No clear regional division of support between the NPP and Solidarity emerged; given the very low voting figures most of the majorities were anyway very small. Even in those seats contested by party leaders the turnout was low: 22,3% in Glenview (Reddy), 14,1% in Arena Park (Rajbansi), and 13,2% in Reservoir Hills (Poolvalingam).

TABLE 3: NATIONAL AND PROVINCIAL VOTING PATTERNS

House	Province	Registered Electors	Votes Polled	% Poll
House of Representatives	Cape	755 673	222 869	29,5
	Natal	33 649	8 595	25,5
	OFS	11 139	6 193	55,6
	Transvaal	81 523	35 197	43,2
	TOTAL	881 984	272 854	30,9
House of Delegates	Cape	11 014	2 649	24,1
	Natal	341 383	67 046	19,6
	Transvaal	59 504	13 918	23,4
	TOTAL	411 901	83 613	20,3

The national and provincial voting figures are summarised in Table 3. If participation is measured in relation to all eligible voters rather than those who actually registered, the overall percentage polls are reduced to 17,8 for the House of Representatives and a mere 14,25 for the House of Delegates, and the percentage poll of coloureds in the Cape Province to 16,85. The UDF claimed even lower figures, allowing for double voting and other electoral abuses, especially in the Transvaal where its estimate of the coloured poll was only 19,9%. In other provinces the discrepancy was smaller; the UDF estimate for the Cape Province was 15,3% (*Star*, 23 Aug 1984).

Official voting figures may also be inflated by abuses of the special vote procedure, intended for those genuinely unable to vote on polling day. More than one-third of all the votes cast for the House of Delegates were special votes, and in several constituencies they outnumbered votes polled on election day itself (*Leader*, 31 Aug 1984). There was a last-minute flood of special votes for Solidarity, and in one constituency the NPP claimed that election officials had been visiting homes with Solidarity workers; Solidarity replied by suggesting that the NPP's special vote lead had been obtained illegally in many cases (*Daily News*, 27 Aug 1984). The TIC and NIC collected a large number of affidavits to support allegations of abuse, including 70 from a single constituency, Actonville on the East Rand, where 59,3% of all votes were special votes. The Indian Congresses declared their intention of asking the Supreme Court to declare the House of Delegates elections invalid on the basis of such evidence (*Cape Herald*, 8 Sept 1984).

Whilst the explanation of low polls involves more than just the strength of the boycott movements, the level of participation, even in official terms, means that the two new Houses of Parliament will begin life with a credibility problem, as Dr F van Zyl Slabbert, the Leader of the Opposition in the House of Assembly, was quick to point out (*Cape Times*, 24 Aug 1984).

Comparisons with previous elections for the CRC and SAIC are interesting. In the former, 48,7% of registered electors voted in 1969 and 47,3% in 1975; allowing for unregistered but eligible voters, these figures represent polls of 38,7% and 27,4% respectively. Thus it appears that the trend of declining acceptance of ethnically based institutions between these elections has continued to produce the even lower 1984 turnout, notwithstanding the offer on this occasion of parliamentary representation. Amongst Indians, however, the 1984 poll is an improvement on the 10,5% of registered electors (nearer 8% if the many spoilt papers are ignored) who voted in the SAIC elections of 1981. The difference in trend probably reflects the much more recent date of the SAIC elections; had elections for the CRC been held as late as 1981, it is likely that a similar poll would have been recorded.

Nationwide figures tend to disguise significant regional variations. The electoral regions used in Tables 4 and 5 have been constructed so as to discover the extent of variation between major urban areas, and between urban and "country" areas. The latter term, which is used by electoral officers in South Africa, is preferred to "rural" because in many areas the voters are resident in towns, some of them in quite large towns, but outside the country's major conurbations: thus the Border and Diaz constituencies include East London and Kimberley respectively.

Coloureds polled relatively well in "country" areas (38,9% overall). Natal coloureds registered the lowest provincial turnout (25,5%), which may reflect some diffusion of opinion from their more numerous Indian neighbours, as well as the success of the campaign waged by the United Committee of Concern. Another important factor was probably the anti-election stance of Archbishop Denis Hurley and the Roman Catholic Church, to which many Natal coloureds belong; this was particularly apparent in the Wentworth constituency. The high polls in the Orange Free State and northern Transvaal, which are based on very small electorates, accord with the more conservative voting behaviour of these areas in CRC elections. Even the seven constituencies of the Witwatersrand and environs produced an above average poll of 37,1%.

The four constituencies of Port Elizabeth-Uitenhage, Allan Hendrickse's home area, produced a 36,1% poll. The LP won 82,1% of the votes and Hendrickse's

TABLE 4: REGIONAL VOTING PATTERNS: HOUSE OF REPRESENTATIVES

Region	Registered electors	Votes polled	Percentage poll
Cape Peninsula	226 706	25 154	11,1
Port Elizabeth	81 549	29 455	36,1
Western Cape "country"	342 090	122 644	35,4
	(365 170[1])		
Eastern Cape "country"	105 328	45 616	43,3
Witwatersrand	61 976	22 985	37,1
Pretoria/Northern Transvaal	19 547	12 212	62,5
Bloemfontein	7 229	3 872	53,6
Rural OFS	3 910	2 321	59,4
	(12 584[1])		
Durban area	21 909	5 060	23,1
Natal "country"	11 740	3 535	30,1
All "country" constituencies	482 615	187 865	38,9

Note (1) Including voters in constituencies where the Labour Party candidate was elected unopposed.

COMPOSITION OF REGIONS (BY CONSTITUENCIES)

CAPE PENINSULA	Belhar, Bishop Lavis, Bonteheuwel, Elsies River, Grassy Park, Hanover Park, Heideveld, Kasselsvlei, Liesbeek, Manenberg, Matroosfontein, Mitchells Plain, Ottery, Ravensmead, Retreat, Rietvlei, South Cape, Silverton, Strandfontein, Table Mountain.
PORT ELIZABETH	Bethelsdorp, Gelvandale, Schauderville, Swartkops.
WESTERN CAPE "COUNTRY"	Berg River, Bokkeveld, Britstown, Diamant, Diaz, Dajosaphat, Esselen Park, Genadendaal (unopposed), Griqualand West, Hantam, Hawston, Kalahari, Karee, Macassar, Mamre, Mid-Karroo, Northern Cape, Nuweveld, Pniel (unopposed), Rawsonville, Riversdale, Robertson, Springbok, Steinkopf, Swartland, Suurbraak, Upington, Vredendal, Wuppertal.
EASTERN CAPE "COUNTRY"	Addo, Border, Dysselsdorp, Fish River, Haarlem, North-eastern Cape, Outeniqua.
WITWATERSRAND	Alra Park, Bosmont, Eldorado Park, Klipspruit West, Newclare, Reiger Park, Toekomsrus.
PRETORIA/ NORTHERN TRANSVAAL	Eersterus, Northern Transvaal, Rust Ter Vaal.
BLOEMFONTEIN	Heidedal, Opkoms.
OFS RURAL	Western OFS, Eastern OFS (unopposed), Southern OFS (unopposed).
DURBAN AREA	Durban Suburbs, Greenwood Park, Wentworth.
NATAL "COUNTRY"	Natal Interior, Natal Mid-east.

own vote (8 020) was the largest for any candidate in the election. Much of his support is thought to come from members of his United Congregational Church. His standing in Uitenhage, his home town, has clearly had a locally diffusive effect to the Port Elizabeth constituencies. One wonders whether, had the LP had an equally established leader based instead in the Cape Peninsula, it might have increased the poll there. Hendrickse's influence may also be reflected in the relatively high poll in the seven "country" constituencies of the eastern Cape, one of which (Addo) was won by his son Peter.

By far the lowest turnout was in the 20 Cape Peninsula seats (11,1%), where fewer votes were cast in total than in the four Port Elizabeth constituencies. Political awareness and the tradition of boycott have always been strong here, in the urbanised heartland of the coloured community, where over one-third of coloureds live. But whereas 51 129 people (25,3%) voted in the 1969 CRC elections and 43 668 (24,7%) in 1975, 25 154 did so in 1984. In terms of those eligible to vote, this represents a mere 5%. The significance of this outcome in the Cape Peninsula, which represents the greatest single blow delivered in the elections to the government's hopes for the new dispensation, will be discussed below.

Indian voters also turned out in greater numbers in less highly urbanised areas, but not to the same extent as coloureds (Table 5). Their lowest percentage polls were recorded in the three Lenasia (Johannesburg) constituencies, of which one, Lenasia West, was the scene of some of the worst election day violence, and in Pietermaritzburg, where the SAIC poll in 1981 was only 6% and NIC organisation is strong. In the 16 constituencies of Durban, the Indian heartland, the overall poll was 17,8%.

A number of factors help to explain why the Indian poll was even lower than that of coloureds. One is the exceptionally high rate of Indian urbanisation, approximately 90%, which is even higher than that of whites. Second, the memory of the derisory poll in the 1981 SAIC elections was still fresh, and deterred most Indian leaders from participation in "establishment" politics. The proximity of Indians to the Zulu, and their awareness of the racial bitterness that Indian participation would cause, was a third factor. This was emphasised by Chief Buthelezi's fierce hostility to the elections, underlined by his reminder of the 1949 Zulu-Indian riots and his threat of a consumer boycott of Indian shops (*Natal Post*, 22-25 Aug 1984). Fourth, it must be remembered that the NIC, unlike the UDF, has a long history behind it and a traditionally central place in Indian politics. Its leaders are men of standing in the community, many of them "graduates" of banning or house arrest. Its prominent use of Gandhi's name in the campaign, claiming that he would have boycotted the new dispensation, was probably effective, although the historicity of the claim was fiercely contested by Solidarity in the columns of *The Graphic* (see, for instance, 17 Aug 1984).

The NIC campaign was given a minor boost in its closing stages by the decision of the Rector of the University of Durban-Westville, Professor Jaap Greyling, to close the university in view of the prospect of student unrest during the election period (*Natal Post*, 22-25 Aug and *Graphic*, 31 Aug 1984). This had the effect of strengthening the manpower resources of the boycotters immediately before and on election day.

Of vastly greater import, however, was the government's own action in detaining 18 UDF, NIC and TIC leaders, including the president and vice-president of the NIC, under section 28 of the Internal Security Act. The detentions were ordered on

21 August, which was probably too late to have a major influence on the coloured elections the following day. There can be little doubt, however, that it was a major boost to the boycott campaign in the Indian elections. It seemed to show, as nothing else could, that the new dispensation was simply old wine in new bottles. In reducing the percentage poll, the detentions also served, in all probability, to help the NPP, which could rely on the support of those who had voted in 1981, and to deprive Solidarity of victory. This was somewhat ironic, given indications (such as the frequency of mention on radio and television) of government preference for a Solidarity victory, and for Dr Reddy as a cabinet member.

TABLE 5: REGIONAL VOTING PATTERNS: HOUSE OF DELEGATES

Region	Registered electors	Votes polled	Percentage poll
Chatsworth	89 015	16 404	18,4
Rest of Durban	98 488	16 906	17,2
SUB-TOTAL	187 503	33 310	17,8
Pietermaritzburg	26 941	2 618	9,7
North and South Coasts	81 699	19 500	23,9
Natal "country"	45 240	11 617	25,7
Cape urban	8 432	2 139	25,4
Cape "country"	2 582	510	19,7
Lenasia	16 994	1 836	10,8
Other Transvaal towns	25 858	7 423	28,7
Transvaal "country"	16 652	4 659	28,0

COMPOSITION OF REGIONS (BY CONSTITUENCIES)

CHATSWORTH	Arena Park, Bayview, Cavendish, Chatsworth Central, Glenview, Havenside, Montford, Moorcross.
REST OF DURBAN	Brickfield, Clare Estate, Durban Bay, Marianhill, Phoenix, Red Hill, Reservoir Hills, Springfield.
PIETERMARITZBURG	Allandale, Newholme.
NORTH AND SOUTH COASTS	Isipingo, Merebank, North Coast, Stanger, Tongaat, Verulam, Umzinto.
NATAL "COUNTRY"	Camperdown, Natal Midlands, Northern Natal, Southern Natal.
CAPE URBAN	Malabar, Rylands.
CAPE "COUNTRY"	North-west Cape.
LENASIA	Lenasia East, Lenasia Central, Lenasia West.
OTHER TRANSVAAL TOWNS	Central Rand, Laudium, Actonville.
TRANSVAAL "COUNTRY"	North-west Transvaal, Eastern Transvaal.

THE LOW POLL AND THE CO-OPTATION STRATEGY

It is inherently impossible to quantify the factors explaining a low poll, a circumstance that allows both sides in any situation to give full vent to subjective explanation. The Indian and coloured elections of 1984 were no exception. The participating parties and the government stressed intimidation, whilst Botha and other government spokesmen also blamed political ignorance and inexperience.

Leaders of boycott organisations naturally claimed the low poll as a spectacular success for their campaign. The weight of evidence points strongly towards the latter view, but a number of other factors must also be mentioned.

A degree of apathy, perhaps equal to 30% in an average electorate, must be allowed for in any election. In the elections in question, allowance must also be made for the newness and inexperience of most of the participating parties, and for their limited organisation and resources, both human and financial. Coloured and Indian workers tend to get home later in the evening than whites, having less time for canvassing; car ownership is much lower; and the number of volunteers available to most parties was small.

There was undoubtedly a degree of intimidation on the part of UDF supporters, although this was not supported by the organisation itself. Roving bands of UDF or Indian Congress supporters regularly disrupted party meetings, forcing Solidarity, for instance, to abandon public meetings in the Transvaal (*Star,* 13 July 1984). On the other hand, the police appeared only too willing to disperse such boycotters with a considerable display of force on several occasions: the Labour Party campaign in the Cape Peninsula was launched in July at a Bishop Lavis meeting that ended with violent police action against anti-election hecklers that was widely regarded as ill-conceived. Fears of the consequences of voting could be a significant factor only where the level of anti-election feeling was anyway strong. It should also be noted that large numbers of people who attended anti-election meetings were clearly not intimidated. There was, on the other hand, intimidation from the other side, from unscrupulous candidates who took advantage of older people in particular, threatening that they would be fined or would lose their pension books if they failed to vote, and taking advantage of their ignorance of the distinction between registration and voting (see, for example, *Star,* 26 July and 1 Aug 1984).

Beyond such explanations for the low polls is the fact that the turnout was lowest in urban areas where voters were more easily reached, transport to the polling booths posed fewer problems, the proportions of middle-class voters were highest, and political awareness generally accepted to be the greatest. Thus to blame the low poll on a lack of political understanding is to ignore the geographical characteristics of the boycott.

This may be illustrated with reference to the Cape Peninsula where the level of rejection was highest. The developed political awareness of this region is rooted in its political history. Its coloured people enjoyed a limited parliamentary franchise on the common roll and, after this was removed in 1956, they were able for a few more years to vote on a communal roll and elect four (white) MPs to represent them in parliament. They were also able to elect their own people to the Cape Provincial Council and the Cape Town City Council. The Peninsula coloured people are therefore conscious of rights removed, whereas those in the Orange Free State and the Transvaal were voting for the first time in a parliamentary election, and were more likely to view the new constitution as a meaningful political advance.

At another level, the new dispensation may be viewed as an element in the government's strategy of political incorporation. In effect this strategy aims to incorporate those who cannot be given political rights in separate geographical territories. The reason that they cannot is essentially because they are urbanised, and they are urbanised because they are, in most cases, irrevocably integrated into South Africa's modern economy. Both Indians and coloureds fall clearly into this category, and the new constitution represents an attempt to incorporate them. Logically, the second stage will be to make some form of accommodation for urban Africans – the "urban insiders" who are needed by the economy and who are therefore given permanent rights of urban residence. In the first instance, however, the government clearly aims to attempt such accommodation outside the constitution and parliament.

Such a strategy depends on those concerned identifying their interests with those of the government. The evidence of the elections is that this has not happened, and especially not among the middle class who might appear the most obvious candidates for co-optation. In the Peninsula constituency of Liesbeek, for instance, the electorate consists largely of owner-occupiers, most of whom have at least two years of high school education, and are either qualified artisans or professional people (T Doman, "Intimidation not to blame for low poll," *Cape Herald*, 1 Sept 1984. Among such voters, an official percentage poll of 5,24 (the second lowest in the country) must be interpreted as a considered rejection of what is on offer. Young people too have evidently rejected the new dispensation, as their absence (except as hecklers) at party meetings and their disproportionate presence at meetings of the UDF and the Cape Action League made clear. In a population with a strongly youthful age structure, their opposition was in itself sufficient to produce a low poll, whilst the infuence of young people on their parents should not be disregarded. It seems clear that the coloured people of the Cape Peninsula do not see influx control, the Coloured Labour Preference Area in the western Cape, and the repeated razing of squatter camps in the Cape metropolitan region as action on their behalf; they have come to identify with the victims rather than the authorities. If the Labour Party is to have any hope of improving its image in the Peninsula, one of the prime requirements will be for the government to relinquish its increasingly unsuccessful attempts at influx control and instead develop an urbanisation policy, as both Dr Slabbert and one of its own MPs, Wynand Malan, have advised (see Hermann Giliomee in *EP Herald*, 31 Aug and *Cape Times*, 1 Sept 1984). The political concomitant of such a policy must be an acceptable degree of political incorporation for all in urban areas, regardless of colour. The new constitution, with its entrenchment of apartheid and exclusion of the African majority, arguably moves in the opposite direction, and as such it has been rejected.

THE NEW DISPENSATION ON TRIAL

The new constitution has fallen badly at its first fence, but it remains on trial. So too do the government, the new Indian and coloured MPs, and also the Progressive Federal Party (PFP) opposition in the House of Assembly, which was strongly criticised by UDF speakers for participating in the new dispensation after having urged a "no" vote in the white referendum of November 1983.

In the early weeks after the election, the Indian and coloured parties, starting with limited credibility, undermined it further in a number of ways that tended to confirm the boycotters' criticisms of their motives for participating. The indecisive result in the House of Delegates election, although promising a vigorous opposition, was unfortunate in that it produced the unseemly spectacle of "wheeling and dealing" by the NPP and Solidarity, each trying to woo the support of Independents and even, in the case of Solidarity, members of the other party. At one stage, when the President had already appointed NPP members to the Indian Ministers' Council, it appeared that enough MPs were prepared to cross the floor to give Solidarity a majority, but they subsequently changed their minds. Meanwhile the NPP image was hardly improved by Rajbansi's request to the President for more ministries, apparently on no better ground than the need to reward a large number of his own supporters. This request was not surprisingly refused, but Rajbansi managed to construct a majority with the backing of three Independents, including the Labour-backed AE Lambat, MP for Actonville. The price of the latter's support was the nomination of another Indian member of the Transvaal LP, Mr Abram-Mayet, as one of the three indirectly elected members of the House of Delegates. The LP thus effectively holds the balance of power in a House to which, in terms of the Prohibition of Political Interference Act, it has no right to belong. The modification or abolition of this Act will be one of the first challenges facing the government in the new parliament.

The House of Representatives also got off to a bad start, with reports of an "organised split" in the LP, involving the breakaway of a small group of MPs led by Peter Mopp, MP for Border. The object was to prevent the PCP, with only one elected MP, claiming its right as official opposition to nominate three members of the President's Council. Instead, this would be done by a "Reformed Labour Party," whose members would subsequently rejoin Labour (*EP Herald*, 11 Sept 1984).

Even before this plan had been abandoned, there were rumours of a genuine split when Allan Hendrickse surprisingly failed to include Jac Rabie, the Transvaal leader of the LP, in the Ministers' Council. It was reported that Rabie planned to cross the floor with several Transvaal MPs, and a document was circulated (in which Rabie subsequently denied involvement) accusing Hendrickse of favouring members of the United Congregational Church and giving preference to LP members from the eastern Cape in his ministerial appointments (*EP Herald*, 17 Sept 1984). These allegations appeared to have some substance, but the split did not take place. In the absence of a serious opposition in the House of Representatives, however, it is likely that internal tensions in the LP will surface more easily; these may well include a move to shift the power base of the party from the eastern to the western Cape (*Sunday Times*, 26 Aug 1984).

An angry exchange between Hendrickse and Van Zyl Slabbert, the PFP leader, boded ill for the future co-operation of their parties. Slabbert questioned Labour's mandate, given the low poll, but said that the PFP might form an alliance with the LP, depending on its "actions and attitudes . . . once the tricameral Parliament comes into operation" (*Sunday Times*, 2 Sept 1984). Hendrickse responded by questioning the PFP's track record in terms of support from its own constituency in the 1983 referendum; claiming that his party was now "the only real opposition to the National Party," he said the LP, not the PFP, would decide whether to form such an alliance. Slabbert's uncompromising reply included a warning that he would "not be the doormat of any politician . . . who seeks to wipe his feet on me in order to ingratiate himself with whatever constituency" (*Sunday Times*, 9 Sept 1984).

The government also contributed to the unhappy start made by the new dispensation, when Botha appointed Hendrickse and Rajbansi to the cabinet as ministers without portfolio, making them in effect representatives of their Ministers' Councils and links between their House and the cabinet. This move reflects some of the fundamental problems facing the new dispensation. To give portfolios to Indian and coloured cabinet ministers would have been too sensitive in terms of CP and right-wing NP opinion, given the control over whites that it would imply. Such an appointment would also, however, be likely to embarrass the minister himself, as almost every portfolio would involve the administration of policies unacceptable to him.

CONCLUSIONS

It may well be true, as Willie Esterhuyse has written, that "the National Party could not afford to move in a more dramatic way on the constitutional issue" (Esterhuyse 1983, 68). But this is only one side of the coin; the other is, quite simply, whether it will work. It poses major problems for both the NP and the coloured and Indian participants. Despite the provision enabling government to continue in the absence of one or two Houses, the government's credibility at home and abroad would be critically damaged by the withdrawal of coloureds or Indians from parliament. They must therefore be given at least enough evidence of achievement to present to their constituents in justification of their continued participation. For the government this will not be easy.

The possibilities are essentially of two kinds: legislative reforms and economic advancement. Under the former heading enough has been said publicly already, perhaps, for the Mixed Marriages Act and Section 16 of the Immorality Act to disappear from the statute book without major loss of support for the NP. The Prohibition of Political Interference Act will at least have to be modified. Beyond this, however, it is difficult to see more fundamental changes taking place without serious consequences for the NP. What is perhaps likely to happen in practice is an administrative relaxation in the way that such laws are applied, whilst they remain on the statute book. In this way improvements could be experienced by coloureds and Indians in the areas concerned, but the government could claim to its "platteland" (rural) constituency that nothing has changed. In order not to alienate many of its urban supporters, however, the government would still need to be very selective of the areas in which such changes were permitted.

The economic advancement of coloureds and Indians would, in the conditions of the 1960s, have been an easier path to follow and one with obvious grass-roots appeal. It is difficult, however, to see how significant improvements to coloured and Indian housing and education, for instance, could be made during the life of the new parliament, given the serious economic recession in which South Africa finds herself. Such changes could, at the present time, be made only at the expense of whites, which would have clear political dangers for the NP.

Another problem for the NP is inherent in the constitution. In the past, South Africa has had what Kleynhans describes as a "responsible party system," in which members of the NP could send resolutions to party congresses, become delegates to them and vote on policies that would be binding on the government (personal communication; see further Kleynhans 1982, ch 8). Under the new dispensation, such assurance is no longer possible, if genuine negotiation is to occur within parliament. This is likely to reduce the incentive to become a NP member and to work for the party at election time; the effect may further weaken NP organisation and reduce membership, which has already decreased considerably outside the Cape, where Botha's provincial leadership has maintained it.

For the participants, there is the danger that they will have "responsibility without authority" (Karl Magyar quoted in *Star,* 23 Aug 1984): responsibility for the actions of the government, but little real ability to change them. Given right-wing pressures on the government, it is highly likely that they will obtain little of what they have claimed to be seeking during the election campaign. This will pose a serious dilemma; whilst the withdrawal option exists, it can be used only once with maximum effect, and it is in any case likely to be resisted out of self-interest by a number of MPs.

Adam Small, the coloured writer and poet, wrote at the time of the 1969 CRC elections that "It does seem better to let our voice be heard, even in 'impossible' places, than to keep quiet in frustration" (*Post,* 11 May 1969). In 1984, the frustration is far greater, but it will not keep quiet. Small was critical of the boycott option in 1969, arguing that "boycott as a political stance, like every other political stance, must be *organised* if it is to make its point" (*Cape Times,* 19 Sept 1969). In 1984, however, the boycotters were nothing if not organised, and their activities will not cease now that the elections are over. Indeed, extra-parliamentary pressures are complementary to the efforts of the Indian and coloured parties in parliament, just as, paradoxically, the success of the boycott campaign maximises the pressure on the government to make meaningful concessions to those elected.

Whereas he had supported participation before, Adam Small advocated boycott in 1984, in the following terms: "If previously apartheid has been the philosophy and conglomerate of policies of a government, now it is the explicit groundwork of the country's constitution . . . There is nothing in it for my children" (*Cape Times,* 18 Aug 1984). The Rector of the (coloured) University of the Western Cape, Professor RE van der Ross argued simply that "the great value of the constitutional proposals now before the country is that they cannot work" (Van der Ross 1983, 117). PW Botha himself said on his inauguration as President that "No constitution can succeed unless the people whom it serves wish it to succeed." The Indian and coloured elections suggest strongly that they do not wish this. If there is any cause for optimism, it is the hope that the breakdown of the new dispensation will lead peacefully to something better, now that it has been admitted that the government of South Africa cannot be in white hands alone. In the words of Van der Ross, "In this failure lies our hope."

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INSTITUTE OF NATURAL RESOURCES

UNVEILING OF FOUNDATION STONE - AT THE NANSINDLELA INSTITUTE OF NATURAL RESOURCES DEMONSTRATION FARM

ADDRESS BY : MANGOSUTHU G. BUTHELEZI
CHIEF MINISTER OF KWAZULU and
PRESIDENT OF INKATHA/KGAPE

FRIDAY, 19 JULY, 1985 PIETERMARITZBURG

Mr Master of Ceremonies, the Principal and Vice-Chancellor of the University of Natal Professor Booysen, the Vice-Principal Professor Schreiner, the Director of the Institute of Natural Resources Professor Hanks, Mr Clarke, Managing Director of IBM, the Honourable Minister of Agriculture and Forestry, Prince Langalethu Dlamini, Chief P. Biyela and Chief N. Biyela, Prince Gideon, Secretary of the Department of Education and Culture Mr Zimu, other distinguished guests, ladies and gentlemen.

I have been looking forward to this day eversince an informal invitation was extended to me to be here today to perform the official unveiling of the NANSINDLELA Institute of Natural Resources information system or Geographic information system for one of the Institute of Natural Resources' demonstration farms and other projects.

We have heard what motivates IBM to be involved in the kind of projects which Mr Clarke has spoken to us about. They are believers in Corporate Social Responsibility. WHen I was invited to the White House by President Jimmy Carter in 1979, he had in his hand a piece of paper on which the Sullivan Principles were spelled out. These principles had then just been authored. President Carter asked me that day what I thought of the Sullivan principles. I at once told him that I fully supported constructive investment by American Corporations in South Africa. President Carter was a Democratic Party

President. Since then, I have always supported the Sullivan Principles. I have done so also at several meetings of the Inkatha Central Committee, and also at our Annual General Conferences. IBM is one of the founder signatories of the Sullivan Principles. I have always had great respect for the things which IBM has done and continues to do for and with Blacks in South Africa. I am extremely delighted with the announcements which Mr Clarke has just made concerning projects that IBM is funding in this part of South Africa. I am not being petty when I say that in that great city and also in the United States. Soweto in Black South Africa. While I admit that the Reef is the heartland of industrialised South Africa, I have found it quite extraordinary that some people both here and in the United States, ignore the existence of millions of black people outside of Soweto. One of the reasons why Soweto is comparatively quiet in the midst of current unrest, as compared with the East Rand for example, is because while our people are as deprived in Soweto as elsewhere, all efforts were put into Soweto in an effort to improve the quality of life of our people in Soweto, after the 1976/1978 massacres and the unrest which these massacres triggered off at the time. I want first of all to pay tribute to IBM for always being amongst the first, in doing what is right. The recognition that there are Black people outside of Johannesburg or Soweto is something which demonstrates the broad vision which is so characteristic of IBM when it exercises its Corporate social responsibility as far as South Africa's deprived communities are concerned. This has been done by some of the other Companies which are signatories to the Sullivan Code as well, but I think the significance of the projects which Mr Clarke has announced is that they focus strongly on Black Rural Development, which has been ignored for quite a long time.

There is nothing as demeaning as poverty to a person's dignity. While apartheid is recognised everywhere as the scourge on the very face of the earth that it is, the worst part of it is that it has confined our people to cesspools of poverty through denying them free movement to the extent that it has compounded the problems which Black people face as a result of poverty.

We all know that there are two strategies that have been chosen by organisations which are in the forefront of the black liberation struggle. The external Mission of ANC has opted for violence as a strategy for bringing about fundamental change in South Africa. Others do not go so far as to openly advocate violence, but they believe in the strategy of protest politics, aimed at making the Country "ungovernable", in their own words. Attached to the strategy of violence as a package deal are sanctions or Disinvestment and the boycott strategy.

Although we in Inkatha acknowledge the role of protest politics we do not regard protest politics as our primary strategy for bringing about change in South Africa. We follow the strategy of non-violence in the old tradition of the founding fathers of the now banned African National Congress as propounded by them in Bloemfontein in 1912 when the African National Congress was launched. We accept that pressures on South Africa are a non-violent way of trying to bring about change. We however do not believe in following just about any strategy regardless of how it affects the very victims of apartheid, who are millions of black people. I refer here in particular to ordinary black people in the street. We mean ordinary black workers and peasants. These are the people from which we get our cue, when it comes to issues such as the Disinvestment issue and the boycott strategy. They are the one's who in the final analysis bear the worst brunt of black oppression in South Africa.

I find that it is most unfortunate that the ordinary black people are despised not only by those who oppress us, but that they are also despised by some of their own people. I am referring here to those who take decisions for the masses of black people caring very little how adversely the ordinary people are affected by their decisions. There are black leaders who believe that they have to do all the thinking for the masses of our people.

IBM has something in common with the Institute of Natural Resources, in that they care for the ordinary people who are ignored and despised particularly in intellectual circles. I find that élites in business or Universities care very little for the dignity of the ordinary people. I am grateful for the opportunity to express my thanks and the thanks of the people of KwaZulu to the Vice-Chancellor of the University of Natal, and the University of Natal, for allowing Professor John Hanks to establish this Institute of Natural Resources. Many people in our Universities like to intellectualise and theorise about ordinary black people without caring whether they themselves have any feelings on the issues confronting the black community of South Africa. I am certain that they might protest when I say that. In many ways they are worse than the National Party Regime, which pretends to be a kind of God to Blacks by pretending to know their wants and wishes. The intellectuals who theorise about my people are worse in that they do precisely what Pretoria does under false pretences of being more enlightened and liberal than the Dictators who control our destinies in Pretoria. I value the work that is done by academics of this University for ordinary black people such as the Vice-Principal Professor Schreiner the Chairman of the Buthelezi Commission, Professor Lawrence Schlemmer, Professor Jill Nattrass, Professor John Hanks, and a few others. I know that by refusing to theorise about us and our plight from Ivory Towers, and coming down to terra firma where we are, to get involved in the nitty-gritty of black development, in order to do something practical about our plight that they draw a lot of flak for themselves. They are often lumped together with me, the KwaZulu Government and Inkatha and called all sorts of names.

Those of us who accept that our struggle for self-realisation and self-fulfilment is a long and hard one, are often accused of delaying the struggle for trying to remain rational and realistic about our sufferings as blacks. We do not do so because we abhor apartheid any less than all decent people everywhere do. Apartheid creates as much revulsion in us as it does in all other decent human beings. It creates the same anger within our breasts as it creates in the breasts of all other decent human beings throughout the world.

We however do not believe that our job is only to express anger and our revulsion for apartheid. We believe that there is a lot that we can still do about it. That is why I am so encouraged by IBM's approach which is consonant with Inkatha's philosophy of self-help and self-reliance. These are the turn-pillars within which we of Inkatha believe we have to wage our struggle for liberation. Apartheid is an abominable ideology and it can never be ever palatable to us.

The big problem that gives apartheid a chance to survive for so long is that amongst its opponents are some people who believe that only what they do in the struggle is a strategy ordained for Blacks by God for black liberation. Disinvestment from our point of view is merely a tactic. It is not a matter of principle. But some people elevate tactics to the level of principle. And if you do not believe in their particular strategies they then attempt to discredit you by pouring all kinds of vitriol on your head, if they observe that you do not think as they do or act as they do.

What we have seen done by Multi-National Companies such as IBM, Mobil, Ford, General Motors, Fluor Corporation, and other signatories to the Sullivan Code, since the Sullivan principles were authored in 1979, has been quite remarkable. They have contributed substantially towards improving the quality of life of their employees. But they have gone much further than just looking after their employees, by doing the kind of things which IBM is doing with our Department of Education and Culture, and also their funding this resource centre, and their donation of a computer and their funding of the three posts needed to run the centre.

We are all aware that our black population growth is too high for the resources at our disposal to enable every young person that is catapulted into the labour market to have an industrial job. We accept that at present the South African economy is in trouble because of its down-swing. But we are aware that even if our economic growth was raised to 5 per cent or more, at the rate of our population growth we would still not be able to give a job to every young person that needs a job. By the turn of the century the position will be much worse than it is today. We have to look at our problems not just on short-term, but also in the long term.

Some people have said that we should support disinvestment because of this fact that even more investment in South Africa will not give every black young person a job. To me this is cock-eyed thinking. We need a sustained economic growth even because of these problems of population growth. IBM by helping these projects with the Institute of National Resources is in fact proving that we can create infrastructure to enable people to help themselves only if there is a continuous and a sustained economic growth, and more and more industries established in our country. If we allow economic growth to come to a standstill through Disinvestment, we can never ever catch up with the provision of facilities for the vast needs of such an increasing population. The plight of our people can only worsen.

It is gratifying that the business community of South Africa has also stepped up efforts to improve the quality of life of blacks even through organisations such as the Urban Foundation. It is also gratifying to realise that the thinking of the South African Government is changing on black urbanisation. Even though the South African Government only accepts black urbanisation grudgingly, it is a break-through that they have got round to accepting it at all. I am alarmed by the population which is mush-rooming around our cities such as Durban and Pietermaritzburg. The number of squatters around these Cities is growing every day, and these are people who need to have their children educated, and who need to be housed with their families and who need to be fed. They all need jobs and security.

I think I needed to give this back-ground to enable you to see the importance of the projects which have brought us together here today. In KwaZulu we have a Department of Agriculture and Forestry and we have the Minister holding that portfolio here with us today. We operate within terrible financial constraints. KwaZulu is one of the most densely populated regions of South Africa. We are land hungry. This has been worsened by laws which have prevented black urbanisation taking place naturally. We have operated within budgetory constraints which have made it impossible for our Department of Agriculture and Forestry to carry out the many agricultural projects which we have had on paper each financial year. This situation has been worsened by perenial droughts in the past few years which have forced us to use money set aside for agricultural projects just to create jobs for thousands of unemployed people. This has been going on for quite a few years now.

All these things unoerscore the importance of Rural Development and food production in the black rural areas of South Africa such as KwaZulu. This makes it crystal clear that it is extremely important for industry, government and Universities to tackle this problem, which is a problem of such horrendous proportions, that not one single body, whether it is the South African Government, or our department of Agriculture and Forestry, or the University, can solve if it tries to do so single-handedly. Thus the importance of the projects which IBM, and the University of Natal are tackling jointly with the full cooperation of the KwaZulu Government's Department of Education and Culture and the Department of Agriculture and Forestry.

The problems of KwaZulu and Natal are not divisible because the two regions are in fact one region and not two separate regions. This is what the Buthelezi Commission Report tries to convey to all of us. Unless we enable black people in the rural areas to step up food production and to use modern agricultural methods we are all in trouble, whether we are in Natal, or in what is called KWAZULU. That is why we are so grateful to the Institute of Natural Resources for what they have done within such a short time. What heartens me and my colleagues is that this rural development project is combined with the work of the Water Research Commission. It is quite clear to me that an interaction between the Institute of Natural Resources, the Water Research Commission, and other bodies is extremely important for the upgrading of Rural structures and also in job creation. Any creation of economic infrastructure in these dire straits in which my people find themselves is extremely important to the future and welfare, not only of just black people, but of every population group in South Africa. Hordes of destitute and hungry people are a threat to peace and any prospects of everyone's future welfare and prosperity.

The projects in the Biyela area in the Nseleni area of KwaZulu which the Institute of Natural Resources has initiated have given many people hope, and they are an indication of what can be achieved if there is cooperation between authorities, the University and the people. I want to stress that despite our poverty, we do not want our dignity demeaned through anything that makes us objects of charity. I am not saying that there is anything wrong with soup-kitchens and similar acts of charity. All I am saying is that we do not want to cultivate a soup-kitchen mentality amongst our people, despite their poverty. This is why I appreciate so much Mr Clarke's words when he stated on behalf of IBM that his company's Corporate Social Responsibility Programme is not intended to create a better standard of living for our underprivileged people, but that it is intended to create a better way of life for them.

When Mr Clarke stressed the need for education and training, he underscored the message I have tried to convey to the Americans and Canadians during my two visits to North America this year. I told them that from my childhood days to my adult life, black people were told bluntly not to cast their eyes in the direction of what Dr. Verwoerd called "green pastures" reserved for Whites. In other words there were certain jobs to which Blacks just had no right to aspire because they just happened to be black. But economic realities have forced this country to shed those Middle Ages' views about what the black man is capable of. Today it is accepted by both industry and government that more and more blacks must be trained in order to service the South African economy. I stressed this as one of the reasons why Multi-National Corporations need to continue to be involved in South Africa. The backlogs which we blacks suffer from in education, in training, housing, welfare etc are so enormous that it is impossible for Government alone to wipe them off. The 'WRITING-TO-READ' programme initiated by IBM at the cost of R20,million, aimed at improving literacy especially amongst young children more than amply justifies my stand against Disinvestment.

This brings me to the significance of the computer facility which IBM is donating to this project and others which IBM has donated towards the 'WRITING-TO-READ' project by means of computer assisted systems. Whenever I visit the United States I am severely questioned about the need to prevent IBM from selling computers to South Africa. The argument against this is that computers are used by the army and police and security to control the movement of blacks and to strengthen the oppressive machinery of the Racist Regime in Pretoria. I have responded each time by saying that computers are also used by us for our Health and Welfare, for pensions, for education etc. and that for this reason I could not possibly support any prevention of any sale of computers to this country by IBM, or any other company. The extent to which IBM is using computer assisted.systems for these projects again more than amply justifies my stand in America on the issue of computer sales to this Country.

On behalf of Black South Africa I thank IBM for the R10 million which Mr Clarke informs us will be set aside for fostering black enterprise and legal reform. Amongst black organisations involved in the liberation struggle, there are those which see a socialist future for us in this Country on the basis that the free enterprise capitalist system has been exploitative of black people and is not free for blacks. I think many black people are influenced to think that the best way to establish an El Dorado here, is through a Socialist future, by the fact that blacks are still outsiders as far as the free enterprise system is concerned. I have myself come to the conclusion that despite its faults the free enterprise capitalist system is the best economic system which man has ever devised which is such a potent force for development. I have added that if we however want to ensure that it has any future in a liberated South Africa, we must create many points of entry for blacks to enter the free enterprise system. I am therefore quite heartened by this generous donation which IBM is making in order to foster black enterprise and legal reform. I see the R500 000 earmarked for a pilot project to develop opportunities for blacks to enter the building industry in the same light. It is clear to me that with the huge population bulge we have in the black community that we need more and more jobs. It is also clear to me that Whites alone cannot create the jobs we need for a growing black population. After all White births are today balanced by their deaths. On the other hand 50 per cent of the black population in KwaZulu is 15 years of age and under. Thus the importance of Blacks creating jobs for blacks, and blacks providing the much needed housing for their own people. The White population and the Indian population cannot be expected to cope by themselves with the housing backlogs we face in this Country and to continue alone to create jobs for Blacks and other population groups.

With the perennial droughts we face almost every year in KwaZulu lately, I cant stress strongly enough the importance of the project which is aimed at the study of water and other geographic and demographic resources in the area of KwaZulu. Without water it is clear that we cannot be able to upgrade the rural infrastructure in rural areas such as KwaZulu. We cannot step up food production without water. We are grateful for the 4331 Mainframe Computer which IBM has donated for use by the University of Natal and the Institute for Natural Resources. I agree with Mr Clarke that it is only when the economy is sound when people have work, when they go on to address the problems in the social and political arenas. The people who are advocating the application of sanctions on South Africa, hope that the poverty that will ensue will ensure that a classical revolution can take place and bring about the change which we all desire to see in this Country. Quite apart from my rejection of violence I do not even think that such a classical revolution will take place in South Africa. It has not happened in the last 25 years, and it is not possible in the next 20 years. This I say purely from the point of view of logistics. I think it is extremely thoughtless to say that our development must stand-still until the day of liberation by denying us the use of computers merely because the government also uses them to strengthen its oppressive machinery as it is alleged.

We have learnt tbe hard way that when people achieve political freedom, their backlogs do not vanish. We have learnt through the experience of Southern Africa that political emancipation does not automatically cause poverty to vanish. Thus the importance of doing eveything that can be done to improve the plight of black people, while at the same time struggling to achieve our political freedom. We have seen the poverty in some parts of Southern Africa that has overwhelmed some independent Nations in Southern Africa where our people have to queue up for many things which we take for granted here such as soap, cooking oil, paraffin etc.

I am saddened by the decisions that have been taken by both the House of RePresentatives and the Senate in the United States concerning Congressman the Bill Grey' Roth legislation concerning investments and economic pressures on South Africa. I have stated in the United States that Americans have of course a right to do whatever they think is in the interests of America concerning their investments. But if they adopt certain policies because they are concerned about the apartheid policies in this country, I believe that it is quite essential for them to take into account the views of the victims of apartheid. I am referring here to the ordinary black workers and peasants who bear the worst brunt of these apartheid policies. I am not referring to people who have their salaries guaranteed and who are not even sackable in the jobs they do, and who have their pension schemes all well laid out for them.

Before sitting down I wish to congratulate IBM for taking a decision not to disinvest from South Africa despite so much pressure that has been brought to bear on IBM. I know of many projects that IBM has initiated in the black Community of South Africa apart from the ones I have mentioned which have brought us together today. I know that IBM initiated PACE College in Soweto. I know that IBM has established High Schools in Cape Town, Durban and Port Elizabeth. I am aware of the 6 Teacher training facilities which IBM has established. I am aware of more than 200 video-taped lessons for black children to assist black children in Mathematics, Science and Biology. I am aware of the FUNDA Library in Soweto which has 75 000 books which was fully sponsored by IBM.

I am aware of the "BEFRIEND-A-SCHOOL" project which IBM initiated which other companies have now supported. I am aware of the typing rooms IBM has established in such institutions as the MANGOSUTHU TECHNIKON and INANDA SEMINARY. I am aware of the assistance IBM has given through its Employee Housing plan for employees of the company. I believe that in terms of its own IBM beliefs that IBM is a good Corporate Citizen and we are grateful for their continued investment in South Africa. Rhetoric serves some purpose in the liberation struggle, but it is practical investment of this kind which is worthwhile as a contribution for a people who are struggling as we blacks do, as the most economically and politically deprived section of the South African population. I am unashamed of my support for the continued investment of American Companies which are signatories to the Sullivan Code. All these acts of corporate social responsibility more than justify my stand on disinvestment.

I am grateful to you all for having listened to me for so long.

MEMORANDUM PRESENTED TO THE MOST REVEREND AND RIGHT HONOURABLE ROBERT RUNCIE, PC, MC, DD, 102ND ARCHBISHOP OF CANTERBURY AND PRIMATE OF ALL ENGLAND AND METROPOLITAN

By Mangosuthu Gatsha Buthelezi
Chief Minister of Kwazulu, President of Inkatha
and Chairman of The South African Black Alliance

LAMBETH PALACE 30TH JULY 1985

I deeply regret not being able to meet with you, my Lord Archbishop, the last time I was in England and I am most grateful for the opportunity of doing so today. As an Anglican I have longed to share my hopes and fears for my country with you, Your Grace, and I have long hoped for an opportunity to hear what your wisdom is for the kind of circumstances in which I exercise my role as a Black leader in the South African struggle for liberation.

When travelling abroad, I have often found myself in discussions with those who cannot understand why Blacks who have suffered so terribly under the yoke of apartheid are not drawn together in common cause by their shared political, social and economic deprivation. They do not understand that the intensity of suffering, and the anger which flows from it, heightens political debate among Blacks, and deepens differences of opinion and dramatises these differences in opposing political action. Blacks in South Africa who are politically involved have deep convictions about the merits of the various courses of action open to them. There are courses of action about life and death issues, and because there is so much at stake and because there is no consensus about what could and should be done, every dispute about alternative objectives, and every dispute about alternative tactics and strategies is intensified. Also, because every action of a political nature aimed at bringing about radical change is put under police surveillance, all Black leaders in the struggle for liberation experience one or another form of intimidation. Only those who believe fervently in what they are doing find the strength and resolve to carry on. The leadership which does rise up to meet oppression and to defy intimidation, is only found among those who have a single-minded purposefulness which is not always an asset for debate and the politics of reconciliation.

Not only are there stark issues to be faced in life and death issues in a complex situation in which there is little consensus about what could and should be done, but action on the part of the state continually disrupts the democratic process by which people select their leaders and exercise choices among options. The jailing and detention of leaders and the intimidation and the banning of organisations destroys the whole process by which people eventually get together in positions in which there is a multitude of choices.

Action by successive National Party governments over the last 37 years has so disrupted the democratic process for so long in South Africa, that I fear for the future. This fear has driven me to be intensely democratic in my own approach, and has led me to do everything in my power to make Inkatha a democratic organisation.

After the banning of the ANC and PAC in 1961, there was widely felt despair in South Africa about the merits of constituency politics and the utility of membership-based organisations. After the massive crackdown and the jailing of hundreds of Black leaders, those who escaped the net either went underground or fled the country to act as leaders in exile. And it was only in the mid-1970's that the perceived failure of underground leadership and leadership in exile led ordinary Black South Africans to once again demand visible political organisations. It was in the years of the early seventies that both Inkatha and the Black People's Convention emerged to fill the vacuum which had been created by police brutality.

I established Inkatha to pursue the hallowed aims and objectives of the old ANC which was founded in 1912, but the Black People's Convention was established as a protest political movement which was not membership-based and this duality in Black politics has persisted ever since. Inkatha remains today the only membership-based Black political movement in the country.

That Black South Africans feel the need for a democratic membership-based organisation is shown by the fact that in the short space of ten years, Inkatha has grown to have a card-carrying membership of over one million people. It is, Your Grace, significant that when you look at the growth pattern of Inkatha, you find that its growth surges forward a space of time after protest politics has produced confrontations and violence which have been crushed by the police, and which leaves people counting the cost in terms of lives and property, and to assess these costs against gains made. During the 1976-77 period of violent unrest in South Africa, when Inkatha was but a year old, a great many friends warned me that I should abandon what I am doing because Inkatha had no future in an angry South Africa which demanded immediate political action for immediate gain. I was again and again told that if I was to survive as a political leader, I would have to relinquish my position as Chief Minister of KwaZulu and would have to join in with other leaders in the protest movement. It was during 1977-78 that Inkatha doubled its membership and this pattern of upward surges of Inkatha membership which has been evidenced ever since, after violent confrontations which did not achieve anything.

Black people yearn to be organised politically. They yearn for viable political structures within which to act and they yearn for the opportunity of meaningful participation in the decision-making process in their country. All Inkatha's policies, all its tactics and strategies, and all its leaders are decided upon by the Movement's Annual General Conference which is the supreme body of Inkatha. I have been elected as President of Inkatha and each and every year I have to make myself accountable to the Annual General Conferences of Inkatha, and I lay before the people that which I have done, and I inform them of the stances I have taken. The current South African position is debated: tactics and strategies are reviewed and Inkatha's leadership is given a fresh mandate within which to act. I adopt no stance, either at home or abroad, which is not dictated by Inkatha's mass membership. Not only do I work strictly within the confines of the mandate I receive from Inkatha's members, but I test Inkatha's thinking at mass meetings in numerous parts of the country. No policy decision and none of Inkatha's tactics and strategies, and none of the positions it has adopted are untested in mass meetings, even in a place like Soweto in South Africa's industrial heartland.

It is therefore with a solid Black mandate, my Lord Archbishop, that I say that Black South Africa's first option is an option to pursue non-violent, democratic tactics and strategies in opposition to apartheid. Black South Africans are aware of the fact that the ANC's Mission-in-Exile has been pursuing an armed struggle for 25 years without any tangible evidence that they will ever succeed. Black South Africa is aware that the South African Government commands the mightiest police and army force on the continent of Africa and that it would not hesitate to use its full might, both within the country and across the length and breadth of Southern Africa. Black South Africans are aware that there is no area in South Africa which can be turned into liberated zones, and they are aware of the immense logistic problems which those who are committed to the armed struggle are faced with.

The fact that the majority of Black South Africans would only turn to violence if all else failed has always given me the courage to continue in my pursuit of non-violent solutions. As a Christian, I am deeply convinced that while in certain circumstances just wars may be fought, although I myself am incapable of defining those circumstances, my deepest conviction is that while there is as yet one stone left unturned in the pursuit of non-violent tactics and strategies, there is no Christian justification for the pursuit of objectives through violence. The fact that Inkatha, as a membership-based democratic organisation, has accumulated the massive support it has, justifies the statements I have just made. It is just not true that it is not possible to pursue aims and objectives through non-violent tactics and strategies.

I am in daily contact with South Africa's suffering Black masses. Every day I am made intimately and deeply aware of Black suffering and the anguish it produces. I am deeply aware of the anger which has been generated by this suffering and as much as anybody else in the country, I understand the forces which are generating violent reactions to apartheid. For me you cannot claim that the Church has failed to be correctly involved in the process of bringing about change and in the same breath justify the violence which is consequent on that failure in theological terms. While there is one thing as yet left undone by the Church; if there is as yet one area in which the Church has under-achieved, and if there is but one thing the Church has left undone, there is for me no theological justification for violence.

There can be no just war as an easy out for the Churches. I have no problem in accepting that some churchmen feel constrained by their conscience and convictions to involve themselves in violence. I understand that God is with the oppressed and in an unjust war Christ is equally present on both sides of the firing lines. Those who feel personally constrained to support violence in South Africa should add courage to their convictions and cross the lines to administer to people in insurgent camps. They should venture out into the world and persuade international Christendom to support violence. For me there is something hypocritically dishonest about unstated commitments to violence and about conferring and negotiating with agents of violence beyond the sight and hearing of ordinary congregations. The Church's witness must be an open witness and if there is a partnership between some of our churchmen and, for example, the ANC's Mission-in-Exile, then that partnership must be an open and proclaimed partnership which is stripped of the hypocrisy which talks in terms of distinguishing between the spiritual needs of insurgents and the intent to kill for political purposes which directs them.

The Anglican Church in a particular sense has an historic role to play in South Africa. While the Church of the Province of South Africa is guided by God Almighty as a separate entity, it is nevertheless true that it has historic links with the British which in the Act of Union established apartheid South Africa after having ruled here as a colonial power. I think of such great historic figures as our Bishop Colenso. I think of other leading Christians such as Archbishop Clayton, Archbishop Joost de Blank, Dean ffrench-Beytah, Canon Collins, Bishop Trevor Huddleston and Bishop Colin Winter, to illustrate the point I am making.

I am not saying that Anglicans have privileged access to the reconciling powers of God, but I do say that all denominations have a living history of their commitment to justice and peace and the

Anglican commitment to justice and peace has for me a particular meaning.

Violence is spiralling upwards and in the current spiralling violence, we are witnessing evil faces of violence which were somewhat hidden before. There have been previous upsurges of violence in South Africa and, God forbid, I think we must be realistic and say that the current upswing of violence will not be the last. Violence will continue escalating until Blacks and Whites are reconciled one to the other, and Blacks and Blacks are reconciled to each other about Black/White relationships in South Africa. This reconciliation will only take place within a political framework whicn moves this country steadily towards becoming a just society.

We had an outburst of violence in the late fifties and we had another outburst of violence after June 16 1976. We are now living through a third explosion of Black violence. When one looks at the nature of these violent explosions one can discern a deepening ugliness in them. The violence of 1976 was a tone uglier than the violence of the late fifties. The violence we see now however, whether it be violence in Black/Black confrontations or whether it be violence in Black/White confrontations, is a great deal more than a tone uglier than the violence of 1976. As violence escalates the horror of it deepens. It is as though the bells of warning are pealing louder as time passes. Christians in South Africa need to hear these warnings and to recognise that the Church has a role to play in bringing to an end the use of violence for political purposes.

I am as aware as most that the question of violence has given rise to vexed theological and moral debate. I do not believe that one can make simplistic statements about it as a Christian. I myself deeply understand how Blacks so lose hope and so lose faith in the politics of negotiation and are so outraged by apartheid and so compassionate for their fellow Black South Africans, that they abandon the ways of peace and seek retribution through violence. I understand how Black South Africans' breasts are boiling with anger and with injustice. No matter how much I myself am totally committed to non-violence, I have an understanding compassion for those who no longer have the courage to pursue non-violent means of bringing about change and seek the easier option to hand of becoming violent.

I am aware that there is a body of theological opinion in Christendom which is beginning to look at violence as a necessary instrument of God in bringing about the downfall of unjust governments. The recent call by the Western Cape region of the South African Council of Churches for Christians to pray for the downfall of the Government on June 16th bears me out. As a

Christian, however, I remain totally convinced that if ever violence in this country is to be judged as just retributive violence, that judgement could only be made after every stone of non-violent action has been turned over, and after every Christian act of reconciliation has failed.

We certainly cannot say at this point in time that the Church has failed despite having turned over every stone. There are a great many stones yet to be turned over. There is still profound hope, born out of Christian commitment in my heart, that while we may be failing, we have not yet finally failed. There are things to do which we must do, which we and others before us have failed to do.

It is, Your Grace, in the context of this thinking that I have been so dismayed to find that the forces working for violent confrontation in South Africa, are so often rewarded with Christian acclaim in the Western world, while those of us struggling on the ground to salvage our country from a consuming fire of violence, and who are pursuing aims and objectives by popular Black demand, are stigmatized as sell-outs because we speak against the employment of violence and other tactics and strategies with which they are associated. Inkatha has received no encouragement from the British Council of Churches for the role it has played in fighting apartheid in arenas where other Black organisations have not dared venture. I am speaking here of the political differences between those who deny any possibility that constituency politics attempting to penetrate the institutional life of South Africa is anything other than collaboration. Non-participation as a principle leads to confronting apartheid society from without, and is the domain of those who employ violence. I believe that there is an urgent need now for international Christian agencies to look carefully at the implications of non-participation and to make assessments of the extent to which the Church in any society must necessarily be a participant in the institutions of that society if the spirit of Christ is to be spread across the fabric of society to work within it.

There may be times in a nation's history when denominational churches will stand aside for a confessional church to emerge, but I believe it is dangerous thinking to talk of a confessional church in South Africa today. It is only when the Church has done everything the Church could and should do that we can think in terms of abandoning working from within the Church to make the Church relevant to the process of liberation.

Your Grace, I share these few thoughts with you as a Christian perplexed by Western Christendom, but yearning for the fellowship of the Church.

EMBARGOED UNTIL DELIVERED

MEMORANDUM FOR PRESENTATION TO SIR GEOFFREY HOWE, FOREIGN AND COMMONWEALTH SECRETARY
BY MANGOSUTHU G. BUTHELEZI, CHIEF MINISTER OF KWAZULU, PRESIDENT OF INKATHA AND CHAIRMAN, THE SOUTH AFRICAN BLACK ALLIANCE
LONDON. 2ND AUGUST 1985.

There has been a dramatic upward spiralling of violence in South Africa during the last year. Its spread and intensity has been such that the State President has deemed it necessary to declare a state of emergency in 36 magisterial districts which have a combined population of over eight million people. The South African Government has a vast range of powers available to it without having to declare a state of emergency, and the fact that this has now been done at a time when the Government perceived a need to appease Western Governments, is one indication of the levels to which violence has risen. I would like, Mr. Secretary Sir, to take this opportunity of expressing a Black South African point of view about the circumstances in which there has been this escalation of violence.

Lawlessness and violence characterise people who suffer mass poverty and oppression wherever they are found. In part, the violence we are witnessing in South Africa today, is the kind of violence one could expect to emerge in Black South Africa at times in which there is a downturn of the economy, resulting massive retrenchment programmes across a number of industries, and at a time in which rising unemployment coincide with dramatic increases in the costs of the essentials of family life. In South Africa poverty is concentrated in Black townships and in Black rural areas, and experienced and perceived deprivation give rise to contagious anger. The fact that mob violence has given rise to the widespread destruction and looting of shops in Black areas is an indication of the extent to which poverty is one of the underlying causes of the violence we are not witnessing. Violent mob behaviour is rewarded with food, clothing and liquor.

It would, however, be a totally false analysis which traces poverty as a fundamental cause of the kind of violence we are witnessing. Poverty produces the circumstances in which violence is more prone to emerge, but the violence which we are now witnessing in South Africa is more directly traced to political anger and people being prey to those who encourage anger to erupt in violence for political purposes.

The West perhaps under-assesses the extent to which the use by Blacks of violence for political purposes is a concomitant of South Africa's new constitution and the Tricameral Parliament which has in practical terms denationalised 22 million people and given constitutional expression to White claims to 87 per cent of the surface area of South Africa and therefore over its wealth, its fiscal policy and its domestic and foreign policy. Under the previous Westminster-type constitution, Blacks could aspire to the vote. Now, however, Blacks have to aspire to the re-writing of the constitution and the pendulum has thus swung further towards revolutionary options.

When the South African Government first announced the new constitution and there was a massive White endorsement for it, many Western observers saw this as a small step in the right direction because it included Coloured and Indian people as junior partners in the Government of the country. This they saw as the introduction of a new principle which they saw as a possible first step of the South African Government in moving away from exclusive White control. Some Western Governments expressed cautious optimism and the South African Government was left with the impression that it had bought time in which to make the kind of adjustments that it was prepared to make. In actual fact, the introduction of the new constitution has bought time for forces working towards the violent overthrow of the Government and dramatically shortened the time available to the South African Government within which to bring about reform.

I have no doubt at all that the National Party's break with many of its hitherto sacrosanct policy principles is highly significant for the future of the country. There is no doubt at all that the State President has accepted the need for reform and as a Black South African, I can say with conviction that there is no doubt at all that White South Africa is now more open to support reformist Government policies than it has ever been before. I have also no doubt that what reforms have been introduced are personally meaningful to millions of ordinary Black South Africans. The granting of freehold title rights to Blacks in urban areas; the increased mobility of Black workers who qualify to remain in urban areas; the recognition by the Government that its homeland policy has failed, and clear statements that Blacks in large numbers in so-called White urban areas are not only necessary but also desirable, are all meaningful to ordinary Black South Africans.

The voice of banking, mining, commerce and industry is a voice talking of the need for reform and while there remains a hard core of White right-wingers seeking to perpetuate White racist domination, opinion formers in White society recognise the need for reform.

Ironically, it is this Black perceived readiness on the part of Whites to move towards reform that has heightened Black expectations and dramatised the gross disparity between the aims of in practical terms denationalised 22 million people and given constitutional expression to White claims to 87 per cent of the surface area of South Africa and therefore over its wealth, its fiscal policy and its domestic and foreign policy. Under the previous Westminster-type constitution, Blacks could aspire to the vote. Now, however, Blacks have to aspire to the re-writing of the constitution and the pendulum has thus swung further towards revolutionary options.

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It is so terribly tragic that the fluidity which is in fact there in South Africa is not being turned to advantage by the State President, and there are tragic indications that he will continue to under-achieve in that which he promised the world he will succeed in. There is now a total White dependence on Blacks and a reciprocal Black dependence on Whites, and it is this interdependence, perceived by both Black and White as never before, which is opening up real prospects for the politics of negotiation to succeed. The National Party Government is standing between Black and White South Africa, inhibiting in what could become an epoch-making decade of endeavour, borne out of goodwill and borne out of a realisation that Black and White South Africans have now to come to terms with the need to live with each other, constitutionally, economically and socially.

I have always refused to have anything to do with moves which give political recognition to White claims to a monopoly of power in 87 per cent of the country. When the State President first formed the President's Council to work on the blue-print of what is now the country's constitution, he sought to establish a Black Advisory Council which would be party to his constitutional manipulations. I refused to have anything to do with that Council, and my non-participation in fact made it impossible for him to get it off the ground. When the new constitution was put to the White electorate in a referendum in 1983, I campaigned vigorously against it across the length and breadth of the country, and warned White South Africa that it was a prescription for the kind of violence which we are now witnessing. When the new constitution was made a reality, I refused to have anything to do with the Special Cabinet Committee which was established to investigate the development of Black political rights within the framework of the new constitution. This year the State President announced the establishment of an informal non-statutory negotiating forum within which he hoped to consult with Blacks about political developments within the four corners of apartheid. I have met the State President formally only once during the last four and a half years, and I could have left him in no doubt as to where I stood politically. After his rejection of South Africa as a single state, I said publicly that I have nothing left to discuss with the State President. An impasse has been reached which at this point in time would appear to be unbridgeable.

I have said again and again that constitutional reform must commence with looking at realities around us. There can and will be no Utopian leap into the future, and if we are to avoid a bloody racist confrontation in South Africa to which present levels of violence are leading us, we must accept the need for the politics of negotiation in which there are compromises on all sides. It is for us a matter of war or compromise. If it is war, it will be the kind of war which leads to scorched earth policies on both sides, in which there will be no winners. If it is compromise, it will lead to a difficult road ahead in which there is at least some hope that Blacks and Whites will be able to find each other.

I have said that I am prepared temporarily to shelve my cherished ideal of one-man-one-vote in a unitary state, if Whites are prepared to sit down with Blacks and look at alternatives, and to examine the merits of federal or other solutions. There is a vast amount of Black goodwill which could still be mobilised to support compromise solutions and there is the equivalent goodwill amongst Whites.

One of the very harsh realities which Western Governments must accept has emerged in South Africa, is that the politics of negotiation are now no longer only threatened by the National Party. Ever-increasingly the politics of negotiation are being threatened by Black political groups, led by the ANC's Mission-in-Exile, who have no interest in compromises and who are seeking only a bloody and violent showdown in South Africa. Now that there is greater fluidity in the country; now that there is very widespread White recognition for the need for reform, and now while there is substantial Black goodwill which would support compromise solutions, the politics of negotiation could possibly lead to really meaningful change. This constitutes a very fundamental threat to those who seek to bring about change through violent revolution. The closer we come to compromise solutions, or even the closer we come to working meaningfully towards them, the more revolutionary ideologists feel threatened. Black revolutionary politics has turned to attempting to destroy the prospects of a negotiated future as much as it is attempting to oppose apartheid and racial domination. Blacks have turned to killing Blacks for political purposes and the ANC's Mission-in-Exile has encouraged internicine Black strife in the hope of destroying the negotiating bases of Black leaders who are capable of mobilising the kind of negotiating powers which would bring Whites to the negotiating table. In a very real sense the first phases of civil war have begun.

There can be no reform in states of anarchy and there can be no reform while the South African Government relies on the horrendous Draconian measures available to the State President once he has declared a state of emergency. The upward spiralling of violence in our Black townships, and the upward spiralling of Government violence in opposition to this violence, work to negate everything working towards the definition of compromises which would be acceptable to both Black and White.

The fact that the sentiments which I am expressing today, Sir, are sentiments supported by millions of Black South Africans, is demonstrated by the fact that Inkatha has now over a million paid-up members. This makes it by far the largest Black political constituency ever to have been formed in the history of the country. Every political scientist knows that a political party can do no more than enrol but a proportion of potential members, and that for every card-carrying member of a political party, there are two or three supporters, and even more sympathisers. That the politics of negotiation is still possible, and that there is sufficient Black goodwill to back up leaders who are seeking compromise solutions, is illustrated by the massive support Inkatha enjoys.

There are other points of view than mine. There are political organisations which differ with Inkatha, but the voice of Inkatha must be heard by the West, not only because it is a de facto massive force, but because its aims and objectives embody aspirations and sentiments which are entirely commensurate with the best that Western democratic philosophy contains. Inkatha is not in politics to acquire power at all costs. In fact, I have chosen what has at times been controversial courses of action because my supporters demand that I do so. I am vehemently attacked by those who work within the philosophy of political violence. Inkatha refuses to do anything now which will destroy the tender hope of the politics of negotiation coming into its own; and it will do nothing now which destroys the prospects of reconstructing South Africa as an open, race-free democracy in the future. Inkatha will do nothing now by way of tactics and strategies which destroy the economic growth base of the country, because without vigorous continued growth of the country's central economy, mass poverty will continue to spread and present all future governments with insoluble problems. Inkatha recognises that South Africa has been locked by history into a north/south axis, and that the destiny of South Africa is a destiny which places it in the community of nations within the sphere of Western industrialised countries.

I believe that Western Governments should now do whatever they can do to strengthen the arm of those who are committed to the politics of negotiation, and I believe that Britain in particular has an international responsibility to do this. Britain withdrew from its colonial control over African countries, and in withdrawing, it did not abandon the people to whatever fate awaited them. British aid to the countries it had granted freedom was significant. Britain did not wash its hands of its previous colonial territories, and say: There you are, you wanted freedom, now get on with it. Britain has remained involved in what was previously colonial Africa. Perhaps Britain could have done more, and perhaps she could have done better than that which she did do, but for me the fact remains that it is to the credit of Great Britain that she did what she thought she could do to assist newly independent states reap more than political benefits from their independence. It is the example of Great Britain in South Africa which I believe has stimulated the United States, as the leading industrial country in the West, into accepting a greater responsibility to do something to aid the Black South Africa. British aid is desperately needed in South Africa to strengthen the hand of those who work towards the politics of negotiation and the diplomatic prowess of Great Britain is desperately not only needed on the interface between Black and White in South Africa, but even more desperately needed on the interface between South Africa and the outside world.

I say this notwithstanding the fact that we highly appreciate the example which Britain, as our coloniser, has set by giving a limited amount of humanitarian aid to Black South Africa. I praise what Great Britain has done which has been emulated by the United States Administration. I wish that Western countries followed the British and the American example, for it is only in adopting a multi-strategy approach, as I have suggested, that they can stimulate and promote the process of change in South Africa.

I support constructive investment in South Africa because I believe that we should never conduct our liberation struggle in such a way that we destroy the foundations for the future in the process of doing so. It is a fact that for too long foreign investment has been exploitative in South Africa. The expose which was published in the British press about this exploitation pricked the consciences of the private sector, including those of captains of British industries. The authoring of Employment Codes was a product of this. I believe that it is much more important to ensure that signatories to these Codes do not cheat, than to pursue disinvestment. I have never suggested that investors must come to South Africa to exploit my people. I support conditional investment as I have always done. This is about the only leverage which foreign countries with investments have that they can use in order to influence the situation in South Africa.

With the recent establishment of trade unions for Blacks, our people are getting their economic muscle developed which I believe they will use not only to negotiate on the factory floor, but also to force White South Africa to negotiate with Black South Africa even about a shared future.

The interdependence between Blacks and Whites is increasing rather than diminishing. I believe that a negotiated future is possible purely because of this interdependence as well as the increasing dependence of the economy on Blacks. That is why I appreciated so much the attitude which Great Britain adopted in the Security Council debate last week on the proposed sanctions on South Africa. We as victims of apartheid would love to see White South Africa being forced to change. We have, however, grown to regard mere symbolic gestures which do not dent the granite apartheid wall with a lot of skepticism. The Rhodesian experience, where so much cheating was done by the West and Russia (on chrome) is still too vivid in our minds. The South African economy with the measure of self-sufficiency it has reached, can survive for much longer than the Rhodesian economy did. We do not mind suffering for our freedom, but the people from my constituency have convinced me that they are not willing to suffer futilely for no returns. That is why we place so much faith in British diplomatic prowess in the interface that needs to take place between Black and White in South Africa.

"THE REAL CHALLENGES BLACK SOUTH AFRICANS FACE"

BY PRINCE MANGOSUTHU GATSHA BUTHELEZI, CHIEF MINISTER KWAZULU,
PRESIDENT OF INKATHA AND CHAIRMAN, THE SOUTH AFRICAN BLACK ALLIANCE
TEL AVIV. AUGUST 1985

Wherever I go in Africa, North America, or Europe I come across people with attitudes towards South Africa and Africans which indicate a total misconception about the real challenges all South Africans face. There is an anti-South African syndrome in the make-up of so many expresses itself in loaded questions, in insinuations and sometimes even in outright accusations of being contaminated, and somehow almost inhuman, because you are free to travel and to discuss issues and you are not incarcerated in jail or an inmate of some military training camp in Africa or elsewhere preparing for violent revolution. For these people apartheid is so abhorrent that only those with the credentials of having been banned, or having been jailed, or having been forced into exile, salvage you from being regarded as subhuman. They labour under the misconception that unless you bear the scars of police brutality, or unless you are being hunted down by jack-booted police, there is something wrong with you.

The vast majority of observers of the South African situation in the outside world are blind to the fact that the real brutality of apartheid batters and maims millions of people who are to them nameless and faceless and are mere statistics. There are hundreds of thousands of Black South Africans who are jailed every year because they have infringed pass offences. There are millions of Black South Africans whose lives are brutalised by apartheid which results in them living in desperate poverty. Millions of South Africans live in shanty towns, covered with bits of cardboard and old pieces of iron to protect themselves from the elements. Millions of Black South Africans are denied ordinary minimal standards of housing and even the most rudimentary social services and amenities necessary for life. Millions of Black South African families are broken up by the country's apartheid laws and influx control regulations. Hundreds upon hundreds of communities are demoralised by poverty and the normal crime rates and lack of security which always accompanies mass poverty. Millions of Black South Africans have each day to fend for each day's food and have no prospects of tomorrow being different. Millions of Black South Africans suffer the indignity of apartheid society in which their human is downgraded and onslaughts are made against their worth as creatures of God. For me, the real challenge of being a South

African is being meaningful to these people on the ground in the circumstances in which they suffer such terrible deprivation.

This challenge of being meaningful must be translated into political tactiand strategies which are pragmatically committed to do that which can be done and pragmatically committed to constantly expanding the horizons of what can be done. Each generation of Black South Africans has produced thousands of martyrs in the struggle for liberation, and each generations of South Africans has produced outstanding leaders such as Nelson Mandela, who have been incarcerated because they are committed South Africans striving for a better future for all South Africans. Each generation has produced those who have been ravaged by police dogs, beaten by police truncheons and brutalised in South African jails. When there is one day a free South Africa, we will have monuments to these heroes and heroines who can be named, and we will have monuments to the unnamed heroes and heroines who suffered and died and remained unknown not only to the outside world but also to the vast majority of their fellow citizens. We as Black South Africans salute our martyrs past and present, but for me martyrdom is that which you desperately need to escape for the love of your country. It is a harsh political fact that leaders in jail cannot lead; it is a harsh political fact that being in exile removes you from the frontline of the struggle; it is a harsh political fact that death and jailing which removes you from continued effective participation in the process of bringing about change is something Black South Africans simply cannot afford. There will be no victory for justice in South Africa if we as Black leaders make cannon fodder out of our children and if we as Black leaders thrust peasants and workers into the frontline of battles where they simply cannot survive.

Where would Israel today be if past leaders had permitted the country to fight six day wars which simply could not be won? Where would Israel today be if Israeli leaders turned its children into cannon fodder? Where would Israel today be if canonised martyrdom was more important than successes in tactics and strategies in which there were real prospects of success? Where would Israel today be if internal political feuding and ideological disputes led Israeli to be killed by Israeli in disputes about what Israel should do?

I come from warrior stock. I trace my ancestry back through my mother to the founding Kings of KwaZulu, and through my father I trace my ancestry back to successive prime ministers and army commanders who served as leaders in KwaZulu from the early nineteenth century when the Zulus were forged into a nation by the mighty King Shaka. There throbs in my veins the blood of a warrior nation which forged a vast African empire and which in the end could only be beaten by the full might of the British army because it enjoyed a vast superiority in the technology of war. The whole history of my people and everything I have learnt from my mother's knee onwards, has taught me to despise political showmanship and has taught me to be pragmatic in that which can and cannot be done.

Through my mother, Princess Magogo ka Dinuzulu, I trace my descent to His Majesty's great-grandfather, King Dinuzulu ka Cetshwayo. It was my uncle King Solomon ka Dinuzulu who gave to my father, Chief Mathole Buthelezi, then Prime Minister of the King and of KwaZulu, his own sister, Princes Magogo Mantithi Sibilile Constance ka Dinuzulu, to re-emphasise the historic ties between the two families and with the intent of creating the blood ties which bind us together. So I stand before you as a descendant of both King Cetshwayo and of the Prime Minister, Mnyamana Buthelezi.

When I sat for many hours at a time, as I did, with Chief Albert Lutuli and when I exchanged thoughts and views with people like Robert Sobukwe, Nelson Mandela and others during the 1950's, none of us could then see into the future. We were all aware of the awesome power of the National Party and its police and army, but we all under-estimated the devastation that was going to be wrecked on the ANC and the PAC. In the 1950's there was a false sense of victory just around the corner. Too many saw the demise of apartheid as imminent and when after the National Party smashed the ANC and the PAC by banning them and jailing their leaders, the euphoria of the 1950's continued into the 1960's. For a full decade Black politics in this country virtually came to a standstill as people waited looking over their shoulder for the return of the ANC External Mission in a triumphant march across our borders. Only a few of our brothers and sisters established the External Mission of the ANC. Thousands of us who were members of the organisations remained inside to oppose apartheid as we have done all these years.

After long weary year after long weary passed and the years turned into a decade, Black South Africans started looking around them in the realisation that it is we here in the country on the ground who would have to wage the struggle for liberation. Black South Africa began realising that liberation would not come from across our borders and that victory would not be showered on our heads like some manna from heaven. The struggle was our struggle and we had to wage that struggle even with our bare hands if necessary. History itself then authored two different Black political strings.

Inkatha arose in the early seventies finally to be formed in 1975 as one of the mainstreams of Black politics. Inkatha gathered together the products of the history of the struggle and welded them together in a renewed commitment to the traditional ideals of Black South Africa. My political world was devastated when the ANC was smashed up by government and police brutality in 1961 and as the years passed, ever-increasing demands were made on me to take new initiatives and to mount a new onslaught against apartheid. I had to think very clearly about what options Black South Africa in fact had, and about what tactics and strategies we could mount to oppose apartheid which would be more than tactics and strategies designed to make moral protests and to gain the sympathy of the world without providing a programme of action in which political power would be accumulative over time. I had witnessed the mushrooming of Black anger and indignation leading to explosions of action which extolled a high price in terms of the destruction of leadership without there being accumulative gains over time.

During those years of deep thought about how I should respond to popular demand to lead I came to conclude that those who abandoned constituency politics and those who abandoned the mobilisation of people in membership-based organisation, and those who abandoned democratic opposition to apartheid because they had been thrashed into submission by brutality, were grievously wrong in their judgement that we had to abandon mass mobilisation and constituency politics in favour of underground politics. Thus, when I finally responded to the people's call and founded Inkatha in 1975, I did so with a bloody-minded determination to organise people into a political force which would avoid the heroic and seek to be meaningful to the people on the ground in the circumstances in which they found themselves. Rather than abandoning the deeply cherished Black South African political ideals which had evolved from the early twentieth century, I sought a return to those ideals which had been abandoned when the ANC and PAC went underground after 1961.

I established Inkatha as a democratic organisation which would sink or swim in terms of its ability to mobilise people and to establish a membership-based political movement. We formulated Inkatha's aims and objectives to encapsulate the ideals which Black South Africans were yearning for. The fact that my assumptions about the felt need of Black South Africa and my assumptions about what ordinary Black South Africans cherished were correctly conceived in 1975 has been demonstrated every year since as Inkatha has grown into the massive force it now is. In the short space of ten years, Inkatha has accumulated more than a million card-carrying members.

Inkatha emerged into the South African political arena on the very eve of the 1976 explosion in Soweto which was to devastate South Africa for two years as it spread across the length and breadth of the country. Inkatha was baptised in the fire of this explosion and it was in these very circumstances where associates and even close friends and those who tried to advise me from a distance, were telling me that I had misconceived Black South African politics, and that I was erroneous in my judgement, that Inkatha began a growth pattern which has since astounded South Africa and the world. During those first strife-torn years of 1976, 1977 and 1978, Inkatha virtually doubled its membership each and every year, and the vigorous growth pattern of Inkatha every year since has shown the extent to which people yearned to be organised and yearned to be involved in the politics in which they are accumulating benefits and the evolution of bargaining powers.

Everything I have ever learned about warfare and valour teaches me that in our circumstances rabble-rousing produces marauding mobs. Black South African political history teaches me that it is noble ideals which mobilise massive forces, and true patriotism must necessarily express values which have and will stand the test of time. Everything in the history of the liberation struggle in South Africa tells me that it is necessary to be flexible in tactics and strategies, but that it is dangerous to skip and hop from one final objective to another. The struggle for liberation in South Africa has always been centred around Black determination to take its full and rightful place in South Africa. The struggle in South Africa has always been constructive, seeking to reform society without destroying it, and this for me remains the real challenge every Black South African should be facing.

Up to 1960, there was unity of purpose in the struggle and there was no disagreement that the parliamentary system we had, and the economic institutions we had, did not have to be changed. We struggled for Black inclusion in the Westminster-type parliamentary system we had, and we struggled for inclusion in the free enterprise system. In the sixties, the old ANC gathered momentum but in the end the truth of the matter is that the confrontationist tactics they increasingly turned to failed, and the movement was thrashed by police and government brutality. Instead of re-adjusting tactics and strategies to meet the new circumstances, the ANC's Mission-in-Exile abandoned everything they had always struggled for and assumed the right to dictate to Black South Africa what it should and should not do, and assumed the right to lead Black South Africa into a classical Marxist revolution relying on violence.

The old ANC was top heavy in structure and insufficient attention was paid to grass root mobilisation and grass root development. Ever increasingly they sought the dramatic in politics, and avoided the back-breaking labour of organising people and building power bases in the hearts and minds of people. Because they had failed at the grass root level, police and government brutality which smashed the organisation left Black South Africa in a political vacuum for over a decade. Prior to the final destruction of the old ANC, it had sent a Mission into exile with a mandate to seek international support for the struggle. It was this Mission which abandoned the time-honoured traditions of Black South Africa.

Their inability to make headway in the Western industrial world and their inability to solicit really meaningful support in Africa, led them to abandon their objectives and led them to seek communist aid for the armed struggle which they unilaterally declared. They were not sent into the world to raise an army; they were sent into the world to mobilise diplomatic support for that which we had always been struggling for.

In the early seventies it became apparent to me and to millions of other Black South Africans that there would be no salvation by marching armies from across our borders. It became apparent to me and to millions of other Black South Africans that allies such as they found in the Kremlin, or such as Arafat or Castro, were allies who despised that which we had always struggle for and that which a long string of martyrs bore testimony to. I had to face the challenge of calling a halt to this downward spiral into political ignominy. I met this challenge by establishing Inkatha on the principles which we had always upheld in our struggle. I began to mobilise people around noble ideals and thousands upon thousands of Black South Africans, many of whom had been staunch members of the ANC and PAC, joined Inkatha. It was Inkatha's aims and objectives and it was Inkatha's commitment to tactics and strategies which made sense to the people, but more than anything else it was Inkatha's true commitment to internal democracy which led to the massive growth of Inkatha. Inkatha provides ordinary Black South Africans with the opportunity of each adding their strength to the other in ongoing pragmatic politics which accumulates benefits.

I am a very proud South African and every member of Inkatha walks tall in the knowledge that we are committed to that which is worthwhile, and when I travel in the Western world or in Africa, and I meet people who look askance at me because I have not committed political suicide or ended up in exile, I am saddened because they simply do not understand the nature of the South African struggle. Ours is the task of establishing a race free open democracy in South Africa, and we will only do this if we pursue the politics of negotiation and employ non-violent tactics and strategies which while they mobilise Black political power and which while they strengthen Black bargaining bases, and which while they oppose apartheid fiercely in every arena possible remain reconciliatory. Inkatha does not seek victory for itself as a political party. Inkatha seeks change for South Africa and it seeks only those changes which every race group in the country will in the end be able to support. The challenge Black South Africans face is not simply the challenge of overthrowing apartheid and establishing an alternative government. The challenge we face is the challenge of making it possible for good government one day to emerge. Bloody Marxist revolutions inevitably replace bad governments with worse governments. Violence breeds violence and a violent revolutionary take-over of the South African Government will necessitate the continued employment of violence by the state in a post-liberation era.

The noble warrior does not rush around proving his strength by thrashing in sight whatever can be thrashed. True power is patient; it is long-suffering because in the confidence of power set-backs and lost skirmishes do not amount to defeat. The power of Inkatha enables me to pursue medium and long-term objectives and it enables me to avoid expediency today which will destroy the prospects of tomorrow.

I say all I have said with the full knowledge that there are just wars, and there are circumstances in which a people must take up arms. But for me those circumstances have not yet arisen in South Africa. We have not yet reached the point in history where we have to have a bloody civil war to make the country ungovernable. Should that time come, the resilient strength of Inkatha will be demonstrated, but it has not come, and we are month by month and year by year demonstrating that the ANC's Mission-in-Exile has prematurely abandoned Black South African ideals. We are showing that what they said could not be done, can be done.

Inkatha's commitment to the politics of reconciliation does not rest on some kind of wish-washy idealism. Inkatha mushroomed into existence in circumstances in which political violence was sweeping across the land, and it now continues its existence in circumstances characterised by violence reaching unprecedented levels being employed for political purposes. Inkatha's members stand up to be counted in Black townships in which Blacks kill Blacks for political reasons. The ANC's Mission-in-Exile has declared war on Inkatha and in radio broadcasts beamed to South Africa every night, Blacks are being urged to murder people who pursue the kind of politics Inkatha pursues. Inkatha members are being brutally slain and their houses are being burnt to the ground. We live in a violent situation; we know the meaning of violence, and not only must we have the intentions of angels, but we must at times have the wisdom of the serpent. Inkatha's vision is infused with a bloody-minded determination to succeed, or to die in the attempt to do so. We not only survive but continue to grow in what is in fact the first phases of a civil war. We have to gird our loins as warriors and we have to equip ourselves to defend our right to remain committed to noble objectives, and to remain committed to non-violent tactics and strategies and to pursuing the politics of negotiation because we remain deeply convinced that we can only achieve our objectives by doing so.

MEMORANDUM FOR PRESENTATION TO MR. SHIMON PERES
THE PRIME MINISTER OF ISRAEL

BY MANGOSUTHU GATSHA BUTHELEZI, CHIEF MINISTER KWAZULU, PRESIDENT OF INKATHA AND CHAIRMAN, THE SOUTH AFRICAN BLACK ALLIANCE

TEL AVIV. AUGUST 1985

The real tragedy of South Africa is the tragedy told in terms of the narrowing of options which Black political leaders have had to choose between over the last three quarters of a century. When the Act of Union created modern South Africa in 1910 and Blacks were excluded from the parliamentary process because they were denied the vote, the granting of even limited political participation would have satisfied the aspirations of the vast majority of leaders. In the early decades of the Union of South Africa, Black leaders could work for qualified franchise. Their demands were couched in liberal terms and they would have gone to any Conference without there being talk of non-negotiables.

Between 1910 and 1948 Blacks sought inclusion in the country's parliamentary system and in its institutionalised life. The strongest Black opposition accepted the country's parliamentary system and accepted the Western industrialised way of life which was emerging, whereas today Black leaders reject the country's constitution and no leader with any real following is seeking a compromise solution to enable Blacks to participate in the present Tricameral Parliament.

Black political leaders are necessarily faced with the responsibility of leading in such a way that not only do Blacks gain access to the parliamentary process, but that that process is acceptable to the majority of all race groups. It is in this context that I want to make a few remarks about my role in the South African struggle for liberation.

I am the Chief Minister of KwaZulu by popular election and I am the elected leader of Inkatha. I hold office because I am a democrat and have responded to popular demand to lead within democratically based institutional life in KwaZulu. I have also responded to popular demand in Inkatha and accepted nomination as President of Inkatha.

The KwaZulu Government over which I preside as Chief Minister is a regional government which is elected by popular vote. There have been two KwaZulu elections in which every KwaZulu adult citizen was eligible to vote, and in which Inkatha won every single seat. I was elected Chief Minister after both these landslide victories.

Inkatha is a democratic organisation; its supreme body is the Annual General Conference which not only decides who shall be leaders but which also dictates the policies and tactics and strategies in which elected leaders have to work. The President of Inkatha and the main office bearers of the Movement are elected for a period of five years, and during the Movement's ten years of existence there has been overwhelming popular support for my Presidency. KwaZulu citizens number nearly six million people and Inkatha's paid-up membership has now passed the million mark. I make the point that I am responsible to vast constituencies in which there are genuine democratic checks and balances within which leadership operates. The point of view I express are points of view which are tested against opinion not only in the KwaZulu Legislative Assembly, and not only at Inkatha's Annual General Conferences, but at mass meeting which I hold across the country every year. What I say in this brief Memorandum is said because I have a mandate from ordinary people to say it.

My political enemies accuse me in terminology of their creation and their connotation, and describe me as a puppet and a stooge and they describe me as working within Government-created platforms. But it is precisely because I have a hereditary leadership role which dates back to KwaZulu antiquity, and it is precisely because I have opposed apartheid vehemently all my life that I have been elected by millions of ordinary Black South Africans to lead them. I make mention of this not because I feel the need to persuade you, Mr. Prime Minister, that I am a genuine Black leader in the South African struggle for liberation. You are informed, Sir, and you know what my position is. I make mention of these things because I want to say to you that Black South Africa supports my being here, and I want to give you the assurance that when the African National Congress' Mission-in-Exile declares Israel to be the enemy of the people of South Africa, they do so for the consumption of Yassar Arafat and others, and they do not reflect Black public opinion in South Africa. I would not be here if popular Black opinion were hostile to my visit to Israel. There will no doubt be a hue and cry and accusations will be flung at me afresh that I am consorting with the mortal enemies of South Africa. These cries will rise because my leadership, which is right at the centre of gravity of the South African political situation, is effective and because the dominant role of Inkatha is becoming ever more prominent.

In my international diplomacy, I remain non-aligned. I seek to associate with those countries and leaders in the outside world who have something positive to offer in the development of South Africa as a country striving for a race-free, democratic future.

Inkatha is dominated by concerns about what is in South Africa's national interests, and I would like to discuss as briefly as the nature of the topic permits what is in South Africa's national interests.

Inkatha believes that those who are involved in leadership positions in the struggle for liberation have to be aware that the way in which Black South Africa breaks the chains of social, political and economic bondage will determine the kind of future we are going to have. The tactics and strategies we employ now will determine what future South African Governments, whatever their ideological persuasions may be, and whatever policies they attempt to implement, are able to do. Black South Africans are aware that their country will be the last on the continent of Africa to be liberated from White racist control. Our suffering has endured longer than the suffering of others, but we do have the advantage of learning from African history.

It is quite clear to me that political victories which have as their aftermath mass poverty and which have destroyed the means of production, result in post-victory governments attempting to govern what is ultimately ungovernable. Whether Governments are Marxist-based, socialist based or capitalist based, they cannot govern effectively if there is mass starvation and growing deprivation at every level in post-liberation periods. It is in South Africa's interests so to conduct our struggle for liberation that we do not destroy the prospects of governability.

South Africa in unique on the continent of Africa in having a really sophisticated central economy and it is unique in the sense that the foundations for future industrial expansion in South Africa are incomparably better than anywhere else on the continent. It is rank foolishness to ignore this fact and to pattern tactics and strategies in our struggle for liberation on models which have successfully led to the overthrow of colonialism elsewhere in Africa. I deny emphatically that South Africa is unique in the sense that the South African Government claims it is unique. The South African Government claims our country to be unique in defence of their refusal to implement the wisdom that has evolved over centuries in Western industrial democracies. There is no reason why a one-man-one-vote system of government in a unitary State cannot succeed in South Africa. There are no reasons why a federal solution, which is colour-blind, cannot succeed in South Africa. The point I make about South Africa's uniqueness is made on an altogether different plain. There is no prospect for as far as anyone can see into the future of an externally based armed struggle against apartheid succeeding and leading to the establishment of a revolutionary government returned from exile. We cannot repeat President Machel's success in South Africa. We cannot repeat Prime Minister Mugabe's success in South Africa. The tactics and strategies we evolve must be South African tactics and strategies which will serve South African realities.

Apartheid has polarised Black and White South Africa and the escalation of violence will inevitably lead to a Black/White confrontation in which both sides will adopt scorched earth policies, and establish circumstances in which there can be no possible victors. The chasm which has been created by apartheid between Black and White in South Africa needs to be bridged and the tactics and strategies we employ in the struggle for liberation must constantly take cognisance of this vital need.

The politics of confrontation and violence inside the country which is working in tandem with those committed to using the armed struggle as a primary means of liberating South Africa, can only further polarise society and reduce the prospects of any kind of worthwhile victory. Tactics and strategies in our struggle for liberation must be woven around the reality of interdependence between all the races of South Africa.

Having seen what has happened across the length and breadth of Africa during the last 20 years, it is absolutely clear to me that unless Black South Africans accept the fact that history has locked our country into a global north/south axis, and unless they accept that our natural position in the international community is a position in which we are allied to global Western industrial democracies, there are no prospects of political victories resulting in anything but a vast increase in what is already desperate poverty and suffering.

The Black South African population constitutes something like 72 per cent of the total population. Roughly half of the country's Black population are already urbanised. There is a dramatic increase in the Black migration from rural areas to urban areas. Around every major town in the country vast squatter areas are developing. There are no prospects of rural areas becoming self-contained as far as the production of food and other necessities of life are concerned. The vast ghettoes housing millions of poverty-ridden Blacks demand a phenomenal rate of industrial development in South Africa. This will never take place if we do not do everything we can each day, each week, each month and each year from now onwards to benefit from South Africa's location in the north/south global axis.

Those who are attempting to alienate South Africa from the international community are gravely mistaken. The more South Africa is alienated from the Western industrial democracies of the world, the more immune it will be to the kind of pressures which we need in the Black struggle. The total economic and political isolation of South Africa is sought by those who have declared their commitment to the armed struggle, and by those who seek to make the country ungovernable through the employment of violence.

White South Africans cannot be punished into submission and the international community must realise that the need is not to punish White South Africa, but to strengthen Black South Africa in its democratic, non-violent demands for change.

Apartheid has excluded the majority of Blacks from any meaningful participation in the country's free enterprise system. The massive industrial development that has taken place in the country has primarily benefited Whites, and it is this fact which makes people blind to the reality that Black South Africans do not want the wealth now monopolised by Whites to be destroyed, they want rather to share the benefits of the wealth that is produced by the country. All those who lobby to support disinvestment as a tactic and strategy ignore the fact that Black South Africans are fighting for their portion of what is already a thin slice of bread. A redistribution of the total wealth of South Africa would only destroy any prospects of progress. We need the redistribution of opportunity to create wealth, and we need the redistribution of opportunity to benefit from wealth, but to take away the slice of bread which Whites are claiming as their own because they refuse to share it, is to take away from both Black and White.

Black South Africans are entitled to a fair share of the wealth of the country because they contribute their share in the production of that wealth. But to destroy the prospects of creating wealth is to destroy all prospects of ever having the future we are striving for.

The South African economy is indivisible. You cannot damage one portion of it without it having repercussions throughout the whole economy. Disinvestment, whether it be selective disinvestment or blanket disinvestment, will damage the prospects of the growth of the economy. Every Government of Western industrialised countries knows the extent to which economies are only minimally controllable. They cannot be switched on or off at will. The pace of economic development cannot be regulated at will. Economic growth is accumulative and Western observers should understand that while there may be a limited utility in the threat of economic sanctions against South Africa, the actual implementation of the disinvestment campaign would be useless unless it hurt the economy, and if it hurt the economy, Blacks now would suffer far more than Whites.

The divide between Black South African leaders who champion the disinvestment cause and who reject it is a fundamental divide between protest politicians and politicians urging the use of violence for political purposes, and politicians working for non-violent means for bringing about radical change. I know of no mass meeting of Black South Africans which has given any Black leader a mandate to work for the economic downfall of the country. No

Black grass root organisation of any magnitude has ever supported disinvestment as a strategy Black South Africa would endorse. Thousands of thousands of Blacks wait outside factory gates for vacancies they hope to fill. Blacks already in employment do not abandon their employment to support the disinvestment lobby. Unquestionably, disinvestment will lead to ever-heightening levels of Black unemployment.

The African National Congress' Mission-in-Exile is working to destroy the country's economy. They are advising Black South Africans to sabotage the machinery of production, and they are seeking to create the kind of chaos in which the country will become ungovernable. If they succeed, they will not make it ungovernable for the National Party only. They will make the country ungovernable for subsequent governments for a long time to come.

Quite apart from these kind of considerations Inkatha's leadership realises that we cannot win the struggle for liberation through an armed struggle and that we will have to use non-violent, democratic means of bringing about radical change. We also realise that it is well-nigh impossible to mobilise Black communities into effective opposition for the politics of negotiation if they are totally demoralised by mass poverty and the want and disease which accompanies it.

There is now a total interdependence between Black and White in South Africa and this interdependence is beginning to create the circumstances in which the politics of negotiation is favoured. The stimulation of the South African economy into maximum possible growth rates is urgently needed to develop Black bargaining powers in a situation in which they become ever-increasingly indispensible for the production of wealth. This is not just a vague generalisation. It is a pertinent political statement of the fact that the upward vertical mobility among Black South Africans generates the kind of forces which accumulate to broaden bargaining bases. The greater the stake Blacks have in the economy, the more bargaining power they will have. Economic expansion from now onwards must necessarily ever-increasingly have vital spin-off benefits for Blacks. The economy has reached the point when any future expansion must necessarily draw substantial numbers of skilled workers out of unskilled ranks, and draw foremen out of skilled workers, and draw managers out of foremen. The ever-increasing upward vertical mobility of Blacks will weigh the scales in favour of the politics of negotiation.

There are existing backlogs which even the most enlightened Government could not eliminate within the foreseeable future unless economic expansion takes place at an unprecedented rate. Any damage to the real potential growth rate of the economy will push the prospects of eliminating these huge backlogs into the unforeseeable future.

Economic sanctions have not worked anywhere in the world, and while Western governments are entitled to express their indignation about apartheid in South Africa in ways and means they see fit, they must be made aware that if they express indignation by applying economic sanctions against South Africa, they act in callous disregard of the wishes and the well-being of ordinary Black peasants and workers.

There is generalised poverty across the whole of Southern Africa. Mocambique is now facing mass starvation in the foreseeable future. Every neighbouring State depends for survival on the spin-off benefits of the South African economy. Inkatha's leadership is aware that the disinvestment campaign is not only detrimental to the interests of Black South Africans, but ultimately detrimental to the interests of Blacks in the whole of the sub-continent. Southern Africa is a natural economic universe in which inter-related and interlocked economies desperately depend on the generating capacity of the South African economy being steadily increased. The industrialisation of the whole sub-continent depends on ever-increasing industrialisation in South Africa. South Africa is a development base for the whole of the sub-continent and it is only those who indulge in pipe-dreams of socialist and communist Utopias who regard the present South African economy, based on free enterprise and integrated with Western industrial countries, as something which can be made a handmaiden to ideological designs.

It is tragic that I express the truth when I say that the disinvestment issue has ever-increasingly become a party political football in Western democracies. It is the Republican/Democrat confrontation in the United States which has dragged the disinvestment debate into the American political arena. There is genuine American disgust with apartheid, and there are those who naively think that support for disinvestment will assist the Black struggle for liberation, but prominent Americans who have had years of personal exposure in the political arena cannot claim to have this naivety. Western Governments owe it as a duty to South Africa and to Black South Africans to keep the disinvestment debate out of their party political arenas.

The above factors dictate that leaders in the struggle for liberation de-escalate the present growth pattern of violence in South Africa and mount non-violent tactics and strategies which are capable of bringing about real reform. The politics of violence will destroy the foundations for the future and will only succeed if there is very substantial international support for violence and this is not going to be forthcoming from the West. The politics of violence necessarily involves leaders in alliances with international communist and socialist forces. On the other hand, non-violent tactics and strategies supporting the politics of negotiation, will not receive substantial backing from international communist and socialist forces, and must necessarily be allied to forces emanating from the Western industrialised world.

The South African struggle must be won by South Africans on the ground in South Africa. But the South African struggle is already internationalised and there is already a massive in-put from the communist and socialist world which supports the politics of violence. It is in South Africa's interests that leaders in the Black South AFrican struggle for liberation adopt tactics and strategies which makes possible the mobilisation of every possible support from the Western industrial world. I do not believe that Black South African leaders have the luxury of choosing between one or another ideological persuasion.

I am correct in what I have said above and this necessitates the recognition that leaders in the South African struggle for liberation need to work towards increasing Black South Africa's bargaining strength in the politics of non-violence. All too few recognise that the politics of negotiation necessitates the mobilisation of public opinion and the expanding of negotiating power bases. This process necessarily will involve Black leaders in employing democratic principles in constituency formation. The action which is needed to generate bargaining positions is preparatory action which will sustain the effort needed to put agreements reached around bargaining tables into practise. The preparation for the politics of negotiation, the process of negotiation and the implementation of negotiated deals, is all part and parcel of the politics of reconciliation which must emerge before negotiations, but which will only come into its own during negotiations and in post-negotiating situations.

Black States bordering on South Africa which have struggled for and achieved political emancipation are poverty-stricken and if leaders in South Africa destroy the country's foundations of the future, they will not only be failing every South African, but they will be failing millions of people across a whole sub-continent. As a democrat I have a deep respect of a people's choice and I have always respected the Mocambican choice to pursue Marxist ideals in the reformation of their state. On the sub-continent of Southern Africa, every State must respect the national choices of other States, but unless there is a symbiotic relationship between all the States of Southern African, the sub-continent is headed towards a very austere future, to say the least. The wealth-generating capacity of South Africa needs to be enhanced in every possible way to make this symbiotic relationship between Southern African States a reality in the future.

It is not in the interests of South Africa to ignore history and to ignore realities around us. The politics of reconciliation must always begin with a recognition of that which is real. If there is going to be no overnight leap into a Utopian future; if there is still a long, hard, uphill road ahead of us; and if the politics of violence will destroy the future, the politics of negotiation must necessarily begin by accepting the need to make compromises in the here and now. I am totally convinced that if Blacks try to ram down White throats the cherished ideal of one-man-one-vote in a unitary state in the here and now, they will succeed only in exploding a racial time-bomb which is already very sensitively set. It is not in the national interests of South Africa for Blacks and Whites to confront each other with totally prohibitive non-negotiables. The politics of compromise is vitally necessary in the interests of the whole country.

Israel is a very distinctive country in the world, and the fire that burns in every Israeli breast would never tolerate the inhuman circumstances in which millions of Black South Africans have to live. Israel as much as any other country in the world knows the horrors of racism. Israel is committed to the free enterprise system and to an industrial way of life which we in South Africa so desperately need. Not only this, but Israel is also versed in the techniques of developing self-help schemes for those who are not fully utilised in the country's industrial life. I am in Israel today, Mr. Prime Minister, because I believe that Israel has something vital to offer in support of the politics of negotiation in South Africa. The Jewish community in South Africa has made its own very distinctive contribution to the development of South Africa's industrial base and to its growth potential, and they must now make a very distinctive contribution towards the rapid inclusion of Blacks in the free enterprise economy and in the democratic institutions of the country.

There is something like a three per cent per annum growth rate of the Black population. Already over half of the total Black South African population is 15 years and younger. A huge population bulge is moving towards the market place, and the prospects of there being a sufficient number of jobs; the prospects of there being sufficient schools and adequate educational, health and welfare services, are exceedingly slight or non-existent. There is now a vast backlog in everything essential in life for Black South Africans. That backlog will grow. It is desperately urgent that everything humanly possible should be done to develop a massive growth in the country's informal economy and to develop every possible technique which can be employed by communities who will be forced to help themselves because this Government or any government in the foreseeable future will be incapable of doing that which should be done.

The State President has thrown up a constitutional stone wall which is detrimental to the politics of negotiation. The country's present constitution gives Whites final decision-making powers over 87 per cent of the country: and therefore over virtually all its wealth and therefore over its fiscal, domestic and foreign policy. The Tricameral Parliament excludes the participation by Blacks in the parliamentary process in principle even in so-called White South Africa where the Government now recognises that their permanent presence is not only necessary but desirable. The right claimed by Whites to occupy, hold and rule 87 per cent of the surface area of South Africa provides an insurmountable stumbling block for the politics of reconciliation. The State President has not made a single utterance which entitles anyone to believe that he accepts the need for power-sharing between Black and White South Africans. He talks about Black constitutional development: he talks about the abolition of hurtful and discriminatory apartheid: he talks about the need for national reconciliation: he talks about negotiation between Black and White: he enunciates reform steps, but he does all these things within the four corners of classical apartheid which insists on final White control in 87 per cent of the country. I have gone as far as it is humanly possible for a Black leader with vast constituency support to go to make the politics of compromise and negotiation possible.

I, like millions of Black South Africans, cherish the ideal of one-man-one-vote in a unitary state, but I have said to the State President that I can shelve that ideal while we negotiate to see whether there is a compromise solution open to us. The ruling National Party must shelve the Afrikaner ideal, and to some extent the White South African ideal, of exercising exclusive political control in 87 per cent of the country. I have taken the necessary bold step forward. The State President needs to do the same. I know that I can sell a compromise solution to Black South Africa, if that solution recognises that South Africa is one country with one people, whom history has already dictated will share one destiny. The State President must move away from wanting only to divide power. He must take the necessary step towards making possible negotiations aimed at sharing power. I would shed overnight the vast Black support I now enjoy if I agreed to the fragmentation of South Africa along the lines envisaged by the State President. The politics of negotiation can only commence if Black and White leaders clearly state what they are prepared to negotiate about.

Mr. Prime Minister, you are versed in the politics of conflict and as a seasoned leader you will understand what I am saying. I plead with you to bring every possible pressure to bear on the South

African Government to make them understand that there will be no conference table in South Africa unless all parties know what they are going there to negotiate about. Israel would enter into no negotiations without an agenda which clearly states what the negotiations would be about. As a Black South African leader I cannot negotiate without an agenda.

Soon after Mr. P.W. Botha became South Africa's new Prime Minister in 1979, I pleaded with him to make a declaration of intent with Black leaders. Instead, he established the President's Council and attempted to set up a Black Advisory Council to legitimise the agenda which the State President's Council was given. I refused to have anything to do with that Black Advisory Council because I knew that the President's Council was the handmaiden of the National Party and was established to formulate a new political dispensation in which Whites would continue to monopolise total power. The State President had to abandon the Black Advisory Council and it never got off the ground. This year we had the first full session of the Tricameral Parliament and in the State Persident's opening address to Parliament, he announced an enlarged Special Cabinet Committee and an informal non-statutory negotiation forum within which Black and White negotiations could take place. I had already refused to have anything to do with the Special Cabinet Committee which was established to negoitate Black poliical developments within the framework of the new Tricameral Parliament. And this year I re-stated my adamant refusal to be drawn into the enlarged Special Cabinet Committee; and I rejected out of hand any involvement in the informal negotiating forum while it was committed to negotiating within the framework of the present Government's constitution. I cannot negotiate on the part of Black South Africa in meetings which have no agendas and which are set up within the framework of a constitution which 72 per cent of the South African population adamantly rejects.

The State President would be entitled to reject my pleas for a statement of intent and he would be entitled to reject any agenda which was aimed at undermining real negotiation. The State President knows that there will be no negotiation with me unless he makes a declaration of intent with Black leaders, and unless we have an agenda within which Blacks could find it possible to negotiate. My refusal to participate in the mechanisms of what the State President calls negotiating bodies and forums is not petulant or wilful. I am not obstructive in my politics. I do pursue the politics of reconciliation, and the kind of statement of intent I am calling for does not tie hands, but opens doors. The statement of intent that needs to be made should necessarily be a consensus document co-authored by Black and White leaders, but because such a statement is so badly needed, I thought it politically prudent to draft the kind of statement which I believe would break the South African Black/White political logjam. I drafted it reluctantly and

I drafted it only as an illustration of the kind of thing I was talking about. It reads as follows:

DECLARATION OF INTENT

We the undersigned hereby declare our commitment to serve God in obedience to His divine will for our country and together:

Recognise that:

- The history of mankind shows the need for adaptive change among all peoples and all nations.
- Nations which have managed to avoid the use of violence in the achievement of national objectives are the nations which have grown in wisdom.
- Both mistakes and lessons not yet learned led to errors of judgement in the mainstream politics in both the Black and White sections of our society.
- The South African people are a family of mankind, seeking to live in harmony in the African community of nations and seeking to do so by expressing civilised ideals in the practical social, economic and political affairs of our country.
- The South African constitution as it is now written is by force of history and reality a first step in constitutional reform which urgently needs the second step to be taken of enriching the constitution to make it as acceptable to the broad mass of African opinion as it has been made acceptable to the broad mass of White opinion.
- The Westminster model of government was not ordained by God to be the only form of good government.

We therefore accept:

- The need to make the preamble to the South African constitution of equal value to all the groups and peoples of the country by enriching the clause: "To respect, to further and to protect the self-determination of population groups and peoples" to include the notion that this can best be done by sharing power. We need to share power in such a way that no one group can dictate to any other group how to express its own self-determination, and we also need to share power in a formula within which the hallowed values of good government are not compromised.

- The need to preserve the constitutionality of the adaptive democratic process on which we will jointly rely in being subservient to the divine will for our country.

We will therefore together seek:

- To negotiate as leaders to amend the South African constitution to make it acceptable to all groups.
- To find an alternative political system to that which the world at large understands by the word 'apartheid' and also to seek an alternative political system in which universal adult sufferage is expressed in constitutional terms acceptable to all the peoples of South Africa.
- To give expression to the common citizenship of all South Africa's peoples without qualifying the meaning of citizenship for any group.
- To use the opportunities presented in practical politics at first, second and third tier levels of government to fashion national unity by deepening the democratic process, and to use the democratic process in explorations of what needs to be done to get the people to legitimise the instruments of government.

We therefore pledge ourselves:

- To express national pride and patriotism by insisting that South Africans will decide South Africa's future in the acceptance of each other as individuals and groups and the acceptance of each other's cultural rights to be who they are.
- To start where we find ourselves in history and to move from there to build on all that is positive and valuable and to change that which is negative and undesirable.
- Each to work in our own constituencies to develop a South African pride in managing our own South African affairs in harmony with internationally accepted standards of civilised decency without being dictated to from without.

Having thus declared we stand together to defend our right even with our lives to take the steps and the time needed to establish consensus between groups and to win support for our joint efforts in the South African family of nations.

And furthermore to stand together to defend South Africa from external onslaughts and to stand together to resist any use of violence which threatens the politics of negotiation aimed at national reconciliation.

Mr. Prime Minister, I have given you the text of this draft declaration of intent, not because I seek support for its formulation. I have done so only to illustrate the point I am making that the demands I make are not politically prohibitive and should be acceptable to all race groups of the country. If Whites, however, cannot make such a statement of intent at this juncture of our history, then there are bitter years ahead. I ask you, Mr. Prime Minister, to support not the wording of the statement, but to support the politics of reconciliation and negotiation which lie behind its drafting.

I repeatedly say that the struggle for liberation in South Africa, must be waged by South Africans in South Africa. Western industrialised countries cannot fight our battle for us, but there is a desperate need for the West to strengthen the hand of those inside South Africa who seek a negotiated settlement and to avoid the escalation of uncontrolled violence. Black political organisations must not only wage struggles for future generations: Black organisations involved in the struggle for liberation must be meaningful to people in the daily lives and circumstances in which they find themselves.

For the sake of the future, we need now to begin on fostering self-help development schemes. For the sake of the future we need now to make a massive endeavour to make community development projects work. We need desperately to stimulate formal and informal educational programmes. We need desperately to grapple with poverty, ignorance and disease right now. Inkatha desperately needs humanitarian aid for the sake of millions of suffering Black South Africans. The West cannot fight our battles for us, but we do need support for the things we do on the ground which we are doing both out of humanitarian concerns and to prepare Black South Africa to meet the rigours of the future once apartheid has been abolished for the scourge that it is.

MEMORANDUM FOR PRESENTATION TO MR. YITZHAK SHAMIR,
THE FOREIGN MINISTER OF ISRAEL
BY MANGOSUTHU GATSHA BUTHELEZI, CHIEF MINISTER KWAZULU, PRESIDENT
OF INKATHA AND CHAIRMAN, THE SOUTH AFRICAN BLACK ALLIANCE
TEL AVIV. AUGUST 1985

"A BLACK SOUTH AFRICAN VIEW OF SOUTH AFRICA TODAY"

Black South Africans have always appreciated the extent to which apartheid has been condemned by the international community. We have always welcomed diplomatic pressure on the South African Government to scrap apartheid and to introduce meaningful reform. Pressure from the international community has encouraged Blacks in their struggle for liberation in South Africa, and I have always called on the international community, and on the West in particular, to exert unrelenting pressure on the ruling National Party and on White South Africa. I say the West in particular because South Africa falls naturally into the Western hemisphere of interests and should take its place in the international community as part of the free market industrialised world. We have always seen, however, a kind of impotence among Western powers when it comes to actually doing something more than protesting in such forums as the United Nations.

During the 37 years of the National Party's rule, there has been an ever-increasing elaboration of apartheid society. The National Party during this period has purged the country's political system of the vestige of British liberal practice which was inherited in 1910; the rigidity of apartheid has strengthened and it became an ever more all-pervading philosophy. International pressures did not deter the elaboration of apartheid and it did not deter the steady growth of Draconian laws and regulations which the State had to employ in order to enforce apartheid.

This year we have seen the international community, and particularly the West, step up its diplomatic pressure on Pretoria and while the withdrawal by France of its Ambassador and its prohibition of further investment in South Africa has sent shock waves through White South Africa, and while the American Bill now being processed is having the same effect, I believe it is pertinent to ask whether this outflow of rising Western indignation is going to be positive and productive. I and a vast, vast majority of Black South Africans have never supported blanket investment and the complete economic isolation of South Africa as a strategy which is beneficial to the struggle for liberation in my country. I have argued against disinvestment frequently both in South Africa and abroad and rather than reiterate what I have said in the past, I would like to talk about some of the political dynamics at work in South Africa today in order to focus on a discussion of Black political options. Unless pressure from the West works in harmony with tactics and strategies pursued by Blacks in South Africa, those pressures will at best be unproductive and at worst amount to negative interference in that which now desperately needs to be done.

The word apartheid has become internationally known and in many North American and Western European countries, it is now a household word with a very negative connotation. This is good, but I am becoming increasingly concerned that the indignation the word apartheid raises in Western minds leads to emotive decisions and uninformed action. The world calls for the eradication of apartheid all too frequently not knowing what this really involves. The eradication of apartheid is not simply the elimination of racist attitudes in White minds who monopolise power. The eradication of apartheid can only be achieved by a restructuring of the South African social, economic and political life. And the internal struggle against apartheid involves the re-writing of the South African constitution and the restructuring of the country's institutionalised life at all levels. How we bring about an end to apartheid, the tactics and strategies we adopt, and the kind of support which Black South Africans receive in their struggle from the international community, all act as determinants of the kind of society we aim to establish to replace apartheid society. Apartheid is not a policy: it is not a political philosophy: it is an institutionalised and constitutionalised White South African way of life. This is all too frequently lost sight of by those who clamour for disinvestment or the complete economic, political and diplomatic isolation of South Africa.

I believe it would be useful for me to summarise the current South African political scene, even if I incur the risk of being over-simplistic.

The South African constitution provides for three Houses of Parliament in which the Whites-only House of Assembly has got a very well defined monopoly of final decision-making power. The House of Representatives, in which there are Coloured Members of Parliament, and the House of Delegates, in which there are Indian Members of Parliament, play a role in consensus politics which the National Party pursues in order to avoid giving evidence of a brutal determination to continue the exercise of exclusive White power. The Indian and Coloured Houses, however, are constitutionally unable to veto anything the White House of Assembly may decide to do in matters which are not defined by the constitution as Indian or Coloured own affairs which primarily comprehend educational, social and health interests of the respective communities. When it comes to internal policy, when it comes to fiscal policy, when it comes to foreign policy, when it comes to the control of the army and the police force, or when it comes to dealing with Black South Africans, the White House of Assembly has a total monopoly of political power.

Not only does the constitution only give Indians and Coloureds a junior partnership in Government but the constitution disenfranchises Black South Africans who constitute 72 per cent of the population. In every practical sense, the constitution goes further than disenfranchising the population, it denationalises them. They are excluded in principle from any participation in the country's parliamentary process, and the new constitution in principle extends the White monopoly of power over 87 per cent of the country's surface area. In this 87 per cent of the country which, it must be remembered, is dominated numerically by Blacks, the constitution makes provision only for consultative mechanisms between Black and White. No statutory body exists in this so-called White South Africa in which the democratic process can make Black opinion felt.

The Government's stated commitment to reform and its states commitment to the constitutional developments for Blacks, commits it only to consult with whom it pleases and there is no statutory demand on the Government to consult with any Black political party.

The end product of reform which the South African constitution envisages is a massive White state enjoying a monopoly of real power related to ten so-called homelands through consultative mechanisms. Homelands which have accepted so-called independence will, in terms of Government thinking, enjoin with so-called White South Africa to join a confederation of Southern African States. Blacks outside these so-called homelands who have accepted "independence" whether they be in urban or rural areas, or in one or another of the so-called homelands which refuse to accept "independence", will only be involved in local government and in umbrella statutory bodies to which Blacks will not be appointed by the Black electorate, but which will be nominated by the Government. These bodies will house Black representatives from already elected Black local authorities.

This is the South African status quo, and while the State President and the National Party is attempting to delude the world that it has a relatively open agenda for future Black political developments, it envisages all developments to take place within this status quo. The State President in a broadcast televised both in South Africa and in Britain stated emphatically that he rejects the notion of one South Africa, with one people with one destiny and he rejects a united South Africa, whether it be a South Africa patterned on one-man-one-vote in a unitary state or patterned on a federal state.

Quite clearly a political logjam has been created by the new constitution. No Black leader with a popular following could negotiate with the Government to bring about reform within the status quo. The status quo must be broken and the eradication of apartheid means doing just this.

Opposition to apartheid ranges over a wide political spectrum. On the one end of the spectrum, there are those such as members of the African National Congress Mission-in-Exile and the Pan Africanist Congress in exile who have expressed a final lack of faith in democracy and who have rejected non-violent tactics and strategies because they regard them as being impotent in bringing about change. Instead they have declared an armed struggle to be the primary means of bringing about change and are working towards the development of a revolutionary climate in the country in which the armed struggle they propose would be allied to revolutionary insurrection making the country ungovernable. Their war is not against apartheid: it is against the South African Government and everyone and every group who does not subscribe to their armed struggle ideals and the employment of violence to bring about change.

The ANC's Mission-in-Exile has got observer status both at the Organisation of African Unity and at the United Nations, and they regard themselves as a South African Government in exile which will one day return to establish a Marxist state.

Shading next to this commitment to the armed struggle and revolutionary insurrection aimed at overthrowing the Government by force, are other groups which see no prospects of bringing about real change through the politics of negotiation and the employment of non-violent tactics and strategies leading to the politics of negotiation. This group includes such organisations as the United Democratic Front, the Azanian People's Organisation, the Congress of South African Students and the Azanian Students' Organisation. These organisations have different political agendas and have increasingly in recent times come into open conflict with each other leading to violent clashes and political assassinations. These clashes, however, in a very real sense reflect only a vieing for supremacy of influence in the politics of confrontation. All these groups are avowedly non-collaborationist and by this word they mean the refusal to participate in any statutory or institutionalised political forum. In general they work in tandem despite the intense conflict which exists between them to make the country ungovernable. Even if they refuse to admit their commitment to the use of violence for political purposes, they generate violent confrontations not only between the people and the State, but in Black society between those who accept the need for opposition to apartheid to be expressed in statutory and institutionalised politics, and those who refuse to do so.

These organisations are praised by the ANC's Mission-in-Exile and their members are exhorted to continue employing the kind of violent tactics and strategies which make Black South Africa's townships no-go areas for all authorities. Violence in politics thus shades from the actions of classic Marxist revolutionaries to protest politics in which violence is employed through intimidation to bring about political ends. Whereas before the ANC's Mission-in-Exile sought to employ violence against the State and to avoid harm to civilian populations, it is now encouraging violence both against the State and against any civilian who does not agree with their tactics and strategies. Hundreds of Blacks have died at the hands of other Blacks in brutal killings which are awesome in their horror. Groups of Blacks gather to burn people alive; they destroy their homes; they stone people to death and they intimidate neighbourhoods into co-operating with them.

Shading next to this confrontationist politics which now accepts the need for violence to bring about change, there are a wide range of smaller groups and individuals of some influence who give moral support to those involved in the politics of confrontation, while they at the same time are avowedly opposed to the employment of violence which those whom they support indulge in. This area of the political spectrum in opposition to apartheid is somewhat amorphous, and there are very strange political bedfellows in it. There are religious leaders in the country who proclaim to the world that violence is now an inevitable consequence of apartheid and that there are no prospects of bringing about radical reform through non-violent means. This acceptance of the inevitability of violence in which they themselves have refused to participate has led to a hardening of attitudes and the radicalisation of attitudes towards South Africa in many places in the outside world. The World Council of Churches has now called for prayers for the overthrow of the Government and there is now widespread support for the tactics and strategies employed by the United Democratic Front, AZAPO, COSAS and AZASM and by Church agencies and semi-government agencies in Europe and North America.

This shade of South African political activists which perhaps can be described as neo-revolutionaries in turn challenges the next category of people and organisations in the South African political spectrum to step up their opposition to apartheid. Black trade unions which do not accept violence and confrontationist politics, are under pressure to radicalise their activities. Church groups are under pressure to do the same, and there is a hardening of attitudes in a very wide range of civic, labour, religious, cultural and sports organisations in South Africa. This relatively diverse political spectrum to the left of the mainstream politics of South Africa is dominantly Black.

On the other extreme end of the political spectrum, there are dominantly White right-wing radical activists who see the need for brutal Government action and see the need for the formation of underground right-wing activist organisations committed to the employment of counter-violence to oppose the revolutionary violence on the far left of the political spectrum. And shading in from the this extremist right, we have the two very conservative political parties, the Herstigte Nasionale Party and the Conservative Party who reject the status quo and want to reverse trends in the country's mainstream of politics which is grappling with the question of reform and which accepts the status quo as a political climate in which this can be done. These two parties work unashamedly for the perpetuation of the kind of White racist political power in the country which aims at the complete social, economic and political separation of races. This element in the right-wing spectrum of South African politics in turn shades into a wide range of labour, civic and cultural organisations and institutions which are deeply conservative which resist the possible emergence of real reformation in South Africa.

When I travel abroad I find all too frequently that Western observers see these two extreme ranges of the South African political spectrum as comprehending South African politics. They seem unaware that the extreme left and the extreme right, and the shading in from those extremes, do not constitute the mainstream of politics which rages around the rejection and defence of apartheid. The mainstream of White politics, and the mainstream of Black politics, grapple with the question of reform, and even if Black and White endeavours are to a very large extent divided by forces in the status quo and run parallel paths, they together contain the only forces capable of bringing about real reform. There will be no Utopian leap into the future which the far left dreams of, and there will never be a return to the Verwoerdian era that the right dreams of. There will be no victory for those committed to the armed struggle, and the ANC's Mission-in-Exile will in fact never return to form a Marxist government. The left and right do not command the forces of change. I am not underestimating the forces they do command. They do command forces of destruction and unless there is meaningful change, the forces of destruction will be strengthened and the politics generated by the extreme left and the extreme right, could well one day result in a conflagration of violence which will be all-consuming and all-destructive and produce a situation in which there will be no victors and therefore no reform. The rapid escalation of violence may succeed in producing a Beirut situation. They will never succeed in bringing about reform leading to social, economic and political stability and progress. Forces now being generated in the West by growing international indignation over apartheid must be cautioned by this statement.

The major determinants at work in South African politics are harsh social, economic and political realities. The dream of Afrikaner domination through rigid apartheid and the total separation of races which earlier National Party governments attempted to translate into reality, now lie shattered. Early National Party thinking envisaged a White State in which there would be ever decreasing numbers of Blacks there as migrent labourers only, and the division of South Africa into a highly industrialised White State, with ten fragmented satellite Black states, has been abandoned. Even if the status quo under the country's present constitution envisages permanent White final authority in 87 per cent of the country, the Government has publicly recognised that its homeland policy has failed: that Blacks in large numbers in so-called White areas are not only necessary but desirable: that the economy depends not only on Black workers but on Black technicians and managers and on a Black consumer market: that Blacks are entitled to freehold property in so-called White South Africa, and have the right of geographic mobility: and that constitutional development for Blacks will have to go beyond the constitution of local authorities and the so-called homeland governments. Harsh economic realities have led to the scrapping of job reservation and the granting of trade union rights to Black workers. Harsh economic realities are now also demanding a review by the Government of pass laws and influx control measures which had hitherto been used as political mechanisms of enforcing race separation.

These recognitions have been wrung out of the National Party by economic reality and the same realities are working inexorably to wring further reforms out of government thinking. The State President has grossly under-achieved in doing what now in fact can be done in the field of reform. He sees himself as unnecessarily precariously balanced between modern and right-wing elements in the National Party and so far he has failed to take the major step forward of seeing himself as a South African President and not an office bearer of Afrikaner self-interest.

The National Party has always been an Afrikaner party committed to Afrikaner self-interest and it has always equated what is good for the state with what is good for the National Party. Were the State President now to take the bold step out of Afrikaner politics into South African politics and seek a mandate across all colour barriers to bring about meaningful reform leading to power-sharing between Black and White, he would gather the massive support which such a commitment would demand. Banking, commerce, mining and industry reject apartheid and the dream of fragmenting South Africa into Black and White States. The Associated Chamber of Commerce has adopted a report they commissioned Professor Lombard to compile in which apartheid is rejected and a clear call is made for a united South Africa which the report envisages as possibly being produced by a federal solution. The Human Sciences Research Council, which is a semi-government agency funded entirely by the Government, has produced a major report which has demolished the cornerstones of classical apartheid and which has provided a broad-based rationale for reform.

These two reports must be seen as part of an ongoing process in which reform is being formulated. In 1980 I called for the establishment of the Buthelezi Commission which was constituted in 1981 and which produced the Buthelezi Commission Report in 1982. The Buthelezi Commission represented a cross-section of political opinion and was representative of all the race groups in the country. I mandated it to examine the future of KwaZulu/Natal within the context of the country as a whole. After intensive work in which there was multi-party participation, and in which banking, mining, commerce and industry participated actively, a consensus report was produced which clearly documented the unworkability of apartheid and spelt out the necessity for a multi-racial endeavour to make democracy a reality in South Africa. Inkatha and the KwaZulu Government accepted the Commission's findings in principle and these recommendations play a very important role in the politics of negotiation we are pursuing.

Opinion-makers throughout the country in all race groups support the kind of thinking in these two reports. I have no doubt in my own mind that steps of really bold reform can now be made. They will gather a massive force around the State President and the Government which is capable of withstanding violent onslaughts from the extreme right and the extreme left.

Inkatha takes its place in the mainstream of South African politics. It has been in existence for ten years and now has a card-carrying membership of over one million members. It is thus by far the largest Black political organisation ever to have emerged in the history of the country. Inkatha's membership represents a cross-section of Black South African society. It is as representative of rural Black South Africa as it is of urban Black South Africa, and while its membership is dominated by peasants and workers, it is representative of every social and economic class. Inkatha is steeped in Black South African political democracy; its Annual General Conference is the supreme decision-making body, and is comprised of elected members from branch and regional structures scattered throughout the country. Inkatha's tactics and strategies are dictated by the Annual General Conference which elects its leaders who have to work within the framework of its constitution and the tactics and strategies and policies which originate in the Annual General Conference. It is thus a genuine mass movement in which grass root membership plays a determining role in everything that is done.

Inkatha occupies its place near the political centre of gravity of South Africa and it is a political movement committed to constituency politics and to an infusion of Black South Africa's cherished ideals into the very fabric of society. It aims to assist in the reshaping of South Africa and it sees the future as one in which there will be an open, race-free democracy in which there will be equality of opportunity and in which the free enterprise system will be liberated from the ideological restraints which apartheid places upon it as a primary means of generating the wealth we will require to improve the quality of life of all the people of South Africa.

The massiveness of Inkatha's support must be measured not only in terms of actual paid-up members, but it must be measured in terms of its continuing vigorous growth patterns and the ever-increasing role it is playing in the country.

It is as futile for the ANC's Mission-in-Exile to believe that it could possibly win an armed struggle while it opposes Inkatha and does not seek Inkatha's support, as it is for the State President and the National Party to think that the new constitution could be made a permanent working constitution of the country without Inkatha's support.

Inkatha has won every single seat contested in two consecutive KwaZulu elections and it is the party which dominates in KwaZulu politics. Inkatha has turned the KwaZulu Legislative Assembly from being a purely regional administrative mechanism into a frontline activist force working for radical change. The KwaZulu Government is a bastion of Black political strength in opposition to apartheid and it is a force of great political magnitude. The Zulu people number around six million, and while KwaZulu refuses to participate in anything that is initiated, whether it be by the Government or by opposition parties to the Government, those initiatives must fail. Had KwaZulu accepted the quasi type independence the Government has been offering so-called homelands, the political face of South Africa would have been radically changed. Had KwaZulu done so there would today already have been a confederation of Southern African states and the final fragmentation of South Africa would already have been a fact. The KwaZulu Legislative Assembly and Inkatha are adamantly committed to one South Africa under one system of government, and we are adamantly opposed to the exclusivity of total White power in 87 per cent of our country. KwaZulu and Inkatha will wage the struggle against apartheid in any and every arena where it is possible to use non-violent tactics and strategies. It is powerful enough to oppose the Government within the institutional fabric of South Africa. It is a market place force with a grass root power and it works in unison with all the positive forces working for radical change.

Because Inkatha has emerged as a central power and because its very considerably political weight is now felt in the country, and because it is demonstrating that the politics of negotiation is feasible, and because it is demonstrating that mass membership-based democratic organisations can successfully employ non-violent tactics and strategies to oppose apartheid, it has incurred the political wrath of all those who are committed to violence because they say that you cannot do what Inkatha is in fact doing. Inkatha has therefore become the target of attacks from the far left and the far right because it is emerging as a central and effective force of opposition to apartheid.

I am absolutely clear in my own mind that the manner in which we bring about the liberation of South Africa, and the manner in which we eradicate apartheid, will determine the kind of future we are going to have. If we succeed in bringing about radical reform and the eradication of apartheid through non-violent tactics and strategies, employed by grass root, democratic opposition to exclusive White political power, we will lay the foundations for a genuine democracy in a post-liberated South Africa. If we employ non-violent tactics and strategies in such a way that we do not damage the economic growth base of the country, we will lay the foundations for the production of wealth which a liberated South Africa will one day so desperately need.

Black South Africans have got the advantages, tragic though it may be, of being the last on the continent of Africa to emancipate ourselves from a White oppressive racist government. We have seen the consequences for the future in states where the struggle for liberation destroyed economic foundations, and we have seen the inability of post-liberation governments to stimulate economic development of the magnitude which they have required to execute their post-liberation programmes. I am totally convinced that whatever else we do in South Africa in our struggle for liberation, we should not damage the country's economy, and I am convinced that whatever options are open to us, we have no option but to accept the free enterprise system as the most efficient system that mankind has evolved to generate economic development. Inkatha therefore refuses to join forces with those who desire to destroy the economy and to make the country ungovernable through the employment of violence in an armed struggle, or to employ violence in confrontationist politics aimed at making the country ungovernable.

There is now a total economic interdependence between Black and White South Africa. This is now a recognised and accepted fact, both by the Government and by those who oppose apartheid. It is accepted by banking, mining, commerce and industry and politics for me revolves around the need to translate the already existing economic interdependence into social and political interdependence. Because White South Africa is totally dependent on Black South Africa, not only as a labour force in mining, commerce and industry, but also a population from which skilled artisans, supervisors and managers will ever-increasingly have to be drawn, Blacks are evolving bargaining bases which they have never had before. These bargaining bases will be strengthened by economic development and they could well be destroyed by a deep and long recession.

Industrialised countries in the Western world and Israel should recognise the political utility in the struggle for liberation of sustained vigorous growth in the South African economy. They should do whatever they can to stimulate economic development in South Africa. They should, however, recognise that this represents the minimum of their obligations to the struggle for liberation taking place. They need to recognise that the very high levels of existing unemployment and the vast backlogs in housing, education, health and welfare services, will take generations to eliminate. There is insufficient wealth in the country simply to redistribute it and give everybody a decent standard of living. It will take a whole generation, if not longer, for equality of opportunity to result in equality of standards of living between the race groups of our country. The West and Israel should therefore understand the desperate need that exists to stimulate the informal economy and to sustain whatever self-help initiatives there are emerging among Black South Africans. Political victories, no matter how dramatic they may be for us, will not create Utopias

The simplistic calls for the overthrow of apartheid are dangerous for the progress of real reform and ignore complex sets of factors and circumstances within which political change must be brought about in South Africa. The West and Israel should not attempt to thrash White South Africa; they should rather attempt to strengthen the forces of opposition to apartheid inside the country which are working for radical reform and the restructuring of a society capable of sustaining the values and institutionalised practices which Western industrial civilisation has instilled out of experience.

1985 REGIONAL CONGRESS OF THE CHAMBERS OF COMMERCE IN NATAL

SYMPOSIUM: "NATAL/KWAZULU - 2000"

Address by Mangosuthu G. Buthelezi
Chief Minister KwaZulu, President of Inkatha and
Chairman, The South African Black Alliance

Read on his behalf by Dr. O.D. Dhlomo
Minister of Education and Culture, KwaZulu
Secretary-General of Inkatha

ELANGENI HOTEL 17TH AUGUST 1985

At the outset of my discussion about Natal/KwaZulu 2000 - an Overview, I want to table a difficulty of which I am being made ever-increasingly aware. When we talk about bridging the chasm between Black and White, and when we talk about the politics of negotiation and envisage Black and White coming together jointly to author a new and better South Africa; and when we talk about the realities which make Natal and KwaZulu inextricably intertwined, the question of who talks to whom comes up, and that question is going to become an increasingly vexed question after the Provincial Council structure as we know it will have been terminated. White Natalians will no longer have elected leaders in second tier government and I envisage this to have a restraining and complicating influence on the negotiation process.

As Chief Minister of KwaZulu and as President of Inkatha I have a legitimised leadership role which enables me to negotiate on behalf of the Black people of KwaZulu/Natal. Through my mother, Princess Magogo ka Dinuzulu, I trace my descent to His Majesty's great-grandfather, King Dinuzulu ka Cetshwayo. It was my uncle King Solomon ka Dinuzulu who gave to my father, Chief Mathole Buthelezi, then Prime Minister of the King and of KwaZulu, his own sister, Princes Magogo Mantithi Sibilile Constance ka Dinuzulu, to re-emphasise the historic ties between the two families. So I am a descendant of both King Cetshwayo and of the Prime Minister, Mnyamana Buthelezi.

Not only is my leadership position legitimised by history: it is also legitimised by popular choice today. Inkatha won every seat in two successive KwaZulu Legislative Assembly elections, and Inkatha is by far the dominant Black political organisation in this region, and however many vociferous individuals proclaim opposition to me and to Inkatha, it remains a widely legitimised voice of Blacks in this part of South Africa. Whenever I speak, I speak within the framework of policies and tactics and strategies which have massive grass root support. Inkatha is genuinely democratic and I express no views in my political life which I have not already thoroughly tested for acceptability at the rank and file level.

I believe that White Natalians should take a hard look at the question of who will represent them in any negotiations with KwaZulu. If there is to be Black/White dialogue, and if we are going to come to sane conclusions about the total interdependence of Black and White in KwaZulu/Natal, then Whites will have to decide who will represent their views and negotiate for their interests.

There is a very widespread recognition in all population groups in KwaZulu/Natal that history has thrust us into a position in which reconciliatory politics is an urgent necessity. There is a wide-felt belief that we are so placed and so related to each other that there is every prospect of reconciliatory politics succeeding in this region. There is also, however, a widespread recognition that Whites in this region cannot get on with their role in reconciliatory politics unless they get a nod from the State President, or unless Mr. Chris Heunis gives them the go-ahead.

White Natalians are therefore finding themselves in a position in which they cannot address their own regional issues and are at the mercy of political decision-making which takes place at Central Government level and which is dictated by regional interests in the Transvaal, the Orange Free State and the Cape. The abolition of the Provincial Council system will magnify this problem. There is recognition for this fact and in a telex addressed to the Minister of Constitutional Development and Planning by the Durban Metropolitan Chamber of Commerce, Die Durbanse Afrikaanse Sakekamer, The Natal Chamber of Industries and the South African Sugar Association, they ask the Minister:

> "To delay termination of the Natal Provincial Council as presently constituted so that the Council's nominees may take part as a matter of urgency in negotiations with the KwaZulu Government, representatives of other population groups, major employer organisations and other interests, with a view to the creation of a single elected administrative body at regional level in which all the people of the region participate in decision-making."

This dilemma is yet another by-product of our apartheid society. In a normal open industrialised democracy there is a clear division between first, second and third tier governments and on each level of government there is consensus politics at work which enables people to resolve local and regional issues within the context of local and regional practice. In South Africa, apartheid in the first instance drives a vertical wedge between the race groups in KwaZulu/Natal and it drives a horizontal wedge between Natal and the rest of the country. The process of consensus politics is fragmented and White Natalians find themselves in a position in which they are expected to attend to regional issues while having to meet the requirements of the National Party's caucus and Government policy which is alien to local and regional KwaZulu/Natal felt needs.

The South African Government is a legitimate government. It is the Government of the country and all democratic governments everywhere in the world extend government policy to local and regional levels but in normal Western democracies, the influence of government policy is legitimised by universal adult franchise. In South Africa successive National Party governments ever since 1948 have equated the good of the State with the good of the National Party, and White Natalians have time and again found themselves as it were playing according to rules of the political game which were drawn up by Transvaal, Orange Free State and Cape National Party interests.

I am personally convinced that in Natal EXCO is now seriously looking at the way the politics of reconciliation in KwaZulu/Natal could be spelt out in terms of clearly defined moves towards power-sharing. The remarks I make about the abolition of the Provincial Council system are therefore not remarks in which I express personal misgivings about the role of the Natal Provincial Administration.

We will in the foreseeable future have an imbalance in the structured leadership of KwaZulu and Natal. We have in KwaZulu a hierarchical structure in which democratic principles involve ordinary people in policy making and decision-making, and in which elected and supported leaders can speak on behalf of nearly six million Black South Africans. After the changes which have been announced have been implemented, we will be facing a situation in Natal in which there are only local authorities, which by tradition have been a-political in terms of party politics, and at the Provincial level we will have an appointed Administrator assisted by an appointed Executive.

This means that structurally I am expected to negotiate with the White population in Natal through the State President and Mr. Chris

Heunis. The National Party has always enjoyed minimal support in Natal as a whole and even less than minimal support in places like Metropolitan Durban and Pietermaritzburg. Natal is a Province in which chambers of industry and chambers of commerce and the South African Sugar Association have long seen the need to move away from classical apartheid. The vast majority of White opinion-makers in Natal have always seen how ridiculous it is for the Government ever to have even contemplated seeing KwaZulu as an independent sovereign state. Businessmen and administrators alike agree with the findings of the Buthelezi Commission that Black and White in KwaZulu/Natal are inextricably interlinked, and that the forward planning process is rendered cumbersome and grossly inefficient by the political boundaries which apartheid has drawn around artificial constituencies, and by the duplication of decision-making bodies. White Natalians are not over-enamoured with the National Party's presiding role over their interests.

Politics is an ongoing thing, and politics in reality left much of the National Party's legislation behind. Job reservation was outdated in practice long before it was scrapped formally. Negotiations between Black workers and management took place before full negotiating rights were granted to Blacks in law. In the same way, the process of urbanisation has taken place despite pass laws and influx control regulations.

In South Africa, we have always been witness to the challenges social, economic and political reality have made to narrow apartheid ideologies. In broad terms, the same thing is happening on the constitutional level. KwaZulu has rejected so-called independence from the word go and it has done so in the face of very strong pressures indeed from Government to toe the line.

The State President in his address to the National Party's Natal Congress on Thursday night recognised that the realities which have to be taken into account in constitutional development are realities which have emerged despite National Party policy for 37 years and not because of it. For the first time a South African Head of State has clearly stated that although the National Party still regards the granting and acceptance of independence, so-called, by national states as an important element in the solutions we are seeking, the Government will not force what are called national states to accept independence. The State President said clearly that if a national state does not accept independence, the Blacks concerned will remain South Africans and will have to be accommodated politically within the borders of South Africa.

It is tragic that the statements made by the State President on Thursday night about reform were so ambiguous, whereas he minced no words in hard-line political statements. We still do not know where he is intending to lead the country. This is tragic.

When, however, you look at the points which the State President made in what he called his manifesto for South Africa, and see them against the background of everything that he has said during this year's Parliamentary session, he has at least defined a position which can be legitimately contrasted with my own draft declaration of intent. The politics of negotiation must be the politics about reconciling those who find the State President's manifesto totally inadequate and those who stand behind him.

Blacks and Whites in Natal urgently need to explore the extent to which the political, social and economic realities here demand negotiation between Black and White. The Natal Provincial Council is having ongoing negotiations with KwaZulu. Those negotiations have reached the stage at which we have now to think concretely in terms of statutory bodies with budgets and executive powers within defined limits. This is political reality moving forward and unless the people of Natal, both Black and White take every advantage that we have to explore to the full what can be done, we will not make our distinctive contribution to the constitutional development of South Africa.

The State President talked about the need for the devolution of power in the reform process and he talked about group or regional structures emerging as the consequences of negotiation. We in this Province must stop looking over our shoulder for more than a nod from the Government than we have already been given. We must proceed with life and death issues here and we must do so as a matter of urgency.

At the Provincial level I have no doubt that members of the Natal EXCO genuinely do have Natal's interest at heart and they genuinely do believe that classical apartheid must be jettisoned by KwaZulu/Natal, but they will soon be put in a position in which they are not responsible to the electorate and will primarily be executive figures in an administrative machine. And given that [illegible] Richards Bay/Empangeni area are characterised by an unNatal-like conservatism, who is there with whom I as Chief Minister and as President of Inkatha can discuss power-sharing in Natal?

I raise these questions and I make these observations now because right now they are very pertinent. We should long since have got together as Blacks and Whites in Natal to look at the implications which the abolition of the Provincial Council system will have for us and the implication which the introduction of the Regional Services Councils will have for us. By the year 2000 it will be seen just how pertinent they are. By then we will be able to count the costs of having already by 1985 lost three years during which we could have been negotiating about power-sharing and could have been examining the utility of the Buthelezi Commission recommendations. By then we will be able to see clearly just how ill-equipped we were in 1985 to draw out the implications of Regional Services Council politics and the dismantling of Provincial Council structures. By then we will clearly see how ill-equipped we were in 1985 to deal with massive outbreaks of violence in the Greater Durban Area. And when we then see these things clearly, we will either see that by 1986 we had stopped looking over our shoulder hoping to get a glimpse of a nod from the Government to go ahead to work out what is in the best interests of Natal and all its people, or we will by the year 2000 see that we failed to do what could in fact be done while it could be done, as we doodle our regrets in the ashes lying around us.

We already have in existence a KwaZulu/Natal Strategic Policy Group in which KwaZulu and Natal are looking for ways and means of maximising co-operation and increasing efficiency. There is also already in existence a KwaZulu Joint Planning Committee on which nominees of the Department of Constitutional Development and Planning sit together with nominees of KwaZulu and the Natal Provincial Administration. This Committee was constituted to look at forward planning of industrial developments points. We need right now to begin looking at the implications that the proposed new Regional Services Councils and the proposed new Provincial Council structures hold for the planning work being done in any one of these existing committees.

As the process of reform gets under way, we will again and again see how rigid ideological frameworks led to bad planning and we will see how costly it is to undo that which was wrongly implemented because of bad planning. We face the massive task in this country of not only putting South Africa's political house in order, but of having to do so while at the same time we stimulate economic development which will be so badly needed to create the circumstances in which reform can in fact be afforded.

We also have the KwaZulu/Natal Planning Council within the framework of which Dr. Louis Rive is looking at what our priorities should be in housing developments and community development for Blacks. The KwaZulu Government also has a Planning Committee and Advisory Council within which we address the same questions. We cannot afford to wait for some unspecified future time in which we get a hoped-for nod from the South African Government. No planning committee could undertake the planning of industrial growth points and the development of the Thukela Basin, for example, without taking the wider socio, economic and political factors into account. Everyone involved in planning should be looking at KwaZulu/Natal options and examining the implications which Government plans have for Natal.

The State President was at pains on Thursday night to state that the Government's willingness to negotiate does not indicate weakness. I am quite sure that Mr. P.W. Botha also understands that my willingness to negotiate about first and second tier government development in KwaZulu/Natal and to negotiate about KwaZulu/Natal political structures does not imply weakness on the part of KwaZulu and Inkatha. Whatever we do in negotiations here on the ground in this part of South Africa, will be done as part of our contribution towards the politics of reconciliation at the national level. We can prove that the politics of negotiation work here in this part of the country and we should be allowed to get on with the job of doing so. It is in the national interest that we succeed. If we succeed it will be because we have provided a reliable vehicle for the devolution of power. Outside of one-man-one-vote solutions and winner-takes-all politics, there will have to be meaningful devolution of power whatever final formula comes into being which integrates South Africa as a totality. We negotiate here in this part of the country as South Africans who do not abdicate from their wider South African responsibilities.

Commerce, industry and organised farming will be called on ever-increasingly to play their vital role in supporting positive developments in their business and investment policy. We are attempting to negotiate the circumstances of prosperity in which there will be the correct distribution of benefits to investors, to workers, and to the community at large. I appeal to commerce and industry to sharpen their focus on what needs to be done to underpin now that which will be seen by the year 2000 to have been wise counsel.

BRIEFINGS ON THE CURRENT SOUTH AFRICAN SITUATION

INKATHA YENKULULEKO YESIZWE (INKATHA) is a mass political movement in South Africa. It is the largest Black organisation ever to come into existence in the history of the country. It was established in 1975 and now has nearly one million card-carrying members distributed over the entire country. Inkatha is strongest in the Province of Natal which includes KwaZulu because it originated in this Province. Zulu-speaking people form the largest single cultural group in the country and Zulu-speaking members form the majority in it, although members from every Black cultural group have joined the Movement. Not only is it the largest Black political constituency in the country, but Inkatha has also the largest youth movement and women's brigade the country has ever seen. As a democratic organisation Inkatha represents mass opinion as it is founded on the widely accepted Black political perceptions and principles first enunciated by the founding fathers of the African National Congress in 1912 and as they have been updated by Black political experience since then.

Inkatha's position on current events is:

1. It rejects apartheid and the homeland policy of the Government and it rejects the new constitution in principle and in practice.

2. It rejects the armed struggle as impractical and as a last resort which Black South Africa has not yet turned to choose.

3. It rejects economic sanctions against South Africa, both because it leads to the politics of empty rhetoric and because it would, if only partially successful, lead to increased Black suffering and the undermining of the Black will to resist oppression.

4. It reflects the will of the people when it holds up a unitary state with a one-man-one-vote franchise system as an ideal, but recognises that if violence of tragic levels is to be avoided, Blacks must be prepared to negotiate the future around acceptable compromises. Inkatha is therefore prepared to look at federal solutions, amongst others.

5. It is adamant about the need for a multi-strategy approach in Black politics and seeks Black unity amongst those who are prepared to co-operate with each other, even on the basis of minimum consensus on tactics and strategies provided, it is recognised that Blacks strive for an open, race-free democracy. It sees itself as a major political force in the

country, but it has never arrogated to itself the sole responsibility for bringing about change, nor has it ever demanded unity on the basis of other organisations towing Inkatha lines.

6. It is committed to exploiting White political vulnerability by capitalising on the irradicable presence of Blacks in every White controlled sphere of interest. It therefore does not reject participatory opposition to apartheid and it believes that as an institutionalised force, it will be better able to mobilise people to utilise their consumer power and their power as workers than it would be if it adopted a non-participatory protest confrontationist position.

Inkatha is a democratic organisation with freely elected leaders and every rank and file member of Inkatha is eligible for leadership positions in the Movement. It is a very well structured and tightly disciplined Movement with branch, regional and national structures. The supreme body of the Movement is the Annual General Conference which determines policy and provides leadership with mandates within which they act.

CHIEF MANGOSUTHU G. BUTHELEZI

Chief Buthelezi is the President of Inkatha and the Chief Minister of the KwaZulu Legislative Assembly. He traces his ancestry back to the founding fathers of the Zulu nation and through his mother is descended from a long line of illustrious Zulu Kings. The male line of succession in the Buthelezi clan traditionally provided successive Zulu Kings to Prime Ministers. When therefore the South African Government imposed so-called homeland administrative machinery on the Zulu people, they turned to Chief Buthelezi to lead them in opposition to it. He rallied support for the rejection of so-called homeland government so successfully that Pretoria had eventually to tell the Zulu people that the South African law did not make the acceptance or rejection of Tribal and Regional Authorities a matter of negotiation, and went ahead with the imposition of Tribal and Regional Authorities on the Zulu people. People then turned to Chief Buthelezi and demanded that he continue to lead opposition to the so-called homeland policy within these structures.

After consulting the leadership of the African National Congress, which was at that time a legal organisation, he bowed to popular demand to continue his leadership. Chief Buthelezi has ever since been by far the most effective opponent of apartheid in South Africa. He has:

- thwarted every Government attempt to manipulate KwaZulu into accepting so-called independence:

- established Inkatha as the largest political organisation ever to have been formed in South Africa.

- gained a clean-sweep victory for Inkatha candidates into successive KwaZulu Legislative Assembly elections.

- transformed the KwaZulu Legislative Assembly, designed by Pretoria to be a cog in its apartheid machine, into a militant instrument of liberation:

- taken the people's grievances to successive Prime Ministers in eyeball to eyeball confrontations and confronted many a Cabinet Minister on behalf of the people;

- campaigned tirelessly for one South Africa, with one destiny for all its people:

- broke the bonds of political ethnicity by forming the South African Black Alliance as an alliance between Blacks, Indians and Coloureds:

- received recognition for what he is doing for the people of South Africa by being received by King Moshoeshoe II of Lesotho; King Sobhuza II of Swaziland; Emperor Haile Sellasie in Ethiopia: President Nyerere: President Kaunda: President Kenyatta, President Hastings Banda, the late President Tolbert: Chief Leabua Jonathon, Prime Minister of Lesotho; Prime Minister Mugabe, Foreign Ministers C.D. Molapo and Mr. E. Sekhonyana of Lesotho: Major General Joseph Garba, Commissioner for Foreign Affairs, Nigeria: Foreign Ministers of Kenya, Dr. Njoroge Mungai and Dr. Munyua Waiyaki and Dr. Peter Onu, Deputy Secretary, OAU. He has also received recognition for his work by being received by President Nixon, President Reagan, the Dutch Prime Minister, Dr. Henry Kissinger, the Foreign Ministers of Canada, Sweden and Germany, and was also received by the Pope:

- gained acceptance as an important leader by being the recipient of two honorary doctorates: he was made an Apostle of Peace (Rastriya Pita) by the Pandit Satyapal Sharma of India, received the George Meany Human Rights Award in the United States, the French National Order of Merit: he was made Knight Commander of the Star of Africa, in Liberia, and was awarded the Paul Harris Peace Award.

He has also been proposed as a candidate for the Nobel Peace Prize:

- led Black opposition to the new constitution which denationalises 72 per cent of the country's population who are Black;
- called the Buthelezi Commission into being and its final report is a significant contribution to alternative political approaches which could make possible real steps towards power-sharing in South Africa;
- opposed the President's Council: ensured the Black Advisory Council never got off the ground and he is adamant in his opposition to attempts that are now being made to divide the political interests of Blacks in urban areas and Blacks in rural areas;
- made a significant contribution in articulating Black South Africa's desire to bring about radical change through non-violent means and through negotiation;
- opposed the cession of the Ingwavuma and KaNgwane areas to Swaziland through a successful legal battle which went as far as the Appellate Division.

CURRENT ISSUES

Reform

During the Referendum campaign and subsequently, the State President and his Cabinet Colleagues argued that the new constitution was only a first step along the difficult road of reform. The inclusion of Indians and Coloureds in the parliamentary system of the country, albeit in a junior partnership capacity, solicited cautious optimisim in many places in the world that a process of reform had started and that it would gather momentum. Western observers are now becoming impatient because the process of reform which they had anticipated is not materialising. They and Black South Africans give praise where praise is due and it cannot be said that there has been no reform in South Africa, but it can be said that as yet there are no signs of reforms which lead to power-sharing between Black and White. The reforms which have been introduced are reforms which are dictated by economic imperatives more than a political desire to bring about reconciliation of clashing Black and White interests in the country.

Blacks have been granted the right to freehold property in urban areas, if in terms of apartheid legislation they are entitled to be there. Blacks have been given greater security of tenure in urban areas if in terms of apartheid legislation they are entitled to be there. Blacks have been given greater mobility in urban areas again if in terms of apartheid legislation they ae entitled to be there. The Mixed Marriages Act has now been scrapped and it is now not a criminal offence to marry across the colour line. The Improper Interference Act has now been scrapped and it is no longer a criminal offence to have multi-racial political parties. Legislation governing business and labour has been amended and it is no longer an offence for Blacks to be managers and supervisors of Whites.

None of these reforms can be regarded as cosmetic and they do in fact have meaning for millions of Blacks. On the other hand, none of these reforms address the really fundamental issues which South Africa now definitely needs to face up to. They do not address the issue of freedom of movement in the land of one's birth. Pass laws, influx control regulations and the Group Areas Act still rigidly separate race groups in every walk of life. Millions of Blacks can only work or settle in what amounts to 87 per cent of their country's surface area with permission from the Government. The reforms giving greater security of tenure and freedom of movement therefore only apply to a minority of the country's Black population. No reform has yet been introduced which even begins to move towards power-sharing between Black and White.

The State President continues to refuse to accept that South Africa is one country with one people, whom history has joined together to share one destiny, and because he refuses to do so, the impasse in Black/White political relationships remains unresolved.

The State President in his speech at the opening of Parliament this year said: "It remains the Government's point of departure that, because of the diversity of South African society, it is neither desirable nor practicable to accommodate all communities in the same way. Different structures by no means imply that the right of Black people to take part in democratic processes is not recognised. Nor will the structures set up for them be inferior or less effective."

The Government is committed to taking South Africa into a confederal future, with Whites, Indians and Coloureds sharing one State and Blacks being divided among ten so-called homelands which the Government sees as States in their own right. These eleven States will in terms of Government thinking be sovereign, and will relate to each other through consultative machinery to deal with common interests.

The true horror of this racist apartheid is that a) it excludes the possibility of a true South African democracy and b) it appropriates 87 per cent of the country and virtually its total wealth for five million Whites out of a total population of nearly 29 million.

Inkatha is irrevocably committed to opposing this racist division of the country. South Africa's political problems are soluble only in the context of a single, united country, whether it be a unitary State, or whether it be a federal or any other kind of State. Unless politics in South Africa moves in this direction, bloodshed in the medium and long term will be unavoidable.

The current political process on the constitutional level will be dominated by attempts by the South African Government to accommodate Blacks living permanently in so-called White South Africa without giving them rights in the new tricameral parliament. This will be a further attempt to fragment the Black South African body politic by giving Blacks in so-called White South Africa and Blacks in so-called homelands different political destinies.

It must also be seen as a National Party ideological compromise. While on the one hand the Government is committed to establishing ethnic States by bringing the ten so-called homelands to independence, on the other hand it is now committed to establishing Black multi-ethnic political machinery in so-called White South Africa. This recognition that the so-called homeland policy is unworkable is a politically exploitable ideological weakness. Black South Africans will see to it that the nearly 50 per cent of the country's 22 million Africans who live in so-called White South Africa reject these Government endeavours.

Inkatha has refused to have anything to do with the Special Cabinet Committee which is attempting to gain legitimacy for the new constitution by obtaining Black co-operation in making it work. The new constitution excludes 22 million Blacks and its deficiencies are a White problem which Whites must solve.

During the first half of this year Black disillusionment about the prospects of real reform being forthcoming has deepened. No meaningful negotiations are taking place between White and Black leaders and no meaningful negotiations are in sight. The State President continues to refuse to make a statement of intent with Black leaders which will persuade them that a worthwhile negotiating agenda can be put on the table. Instead of a process of reform being mounted which will bring about Black/White reconciliation, we are witnessing in South Africa today an adamanat Government refusal to move from exclusive White control over 87 per cent of the country, and an escalation of violence for political purposes being employed by Blacks.

The State President has had to declare a state of emergency in 36 magisterial districts because the near Draconian powers which the Government has at its disposal every day of the year have proved inadequate to maintain law and order in many areas. Over 8 million people are now removed from civilian rule and are subjected to control by the army and the police.

While the current levels of Black violence which have erupted and while the Government sees fit to respond to these levels of violence, with imposed states of emergency, the reform process must necessarily be halted. The forces of violence and counter-violence which do not put negotiations as an urgent item at the top of the agenda are pushing South Africa into a position in which no meaningful reform can take place. There are forces at work in Black politics aiming to make the country ungovernable. They are not interested in reform and are only interested in bringing about the downfall of the Government by making the country ungovernable. The Government itself fuels these forces with its own unwillingness to introduce real reform. We have thus an escalation of violence and counter-violence which bodes ill for the future.

Black unity

While Blacks en masse refuse to participate in divisive politics and refuse to co-operate in the racially divisive constitutional changes, the Government has been strikingly successful in creating deep divisions in the Black body politic. Blacks with minority support have accepted the trappings of heads of state in so-called independent homelands. The conflicts between AZAPO and UDF flow from the structure of South African politics. Opposition to Inkatha by the ANC's External Mission can be traced to the same source. Deep rifts between Africans, Indians and Coloureds also originate in White-created political structures. Blacks beat each other with White ideological sticks and unless Black South Africans accept the need for a multi-strategy approach, and strive for liberation across broad fronts on the basis of minimal agreements, Black/Black conflicts will cripple, and ultimately destroy, the Black national will to achieve one country, with one destiny for all its people.

Black politics is bedevilled by leaders of so-called independent homelands keeping the Government committed to its undertakings when it granted them so-called independence. They must step aside from Government protection and test their policies and their aims and objectives before mass meetings of tens of thousands of ordinary Black South Africans, as Chief Buthelezi does in Soweto and other places. The ANC's Mission in Exile must cease regarding itself as a government in exile and the sole representatives of the people, and do the job that exiles can do and await the circumstances which

Black South Africans will create for them to return. Leaders in groups such as AZAPO and the UDF must return to the hard, grinding work of constituency politics so that the people themselves can judge policies and appoint leaders and direct courses of political events. All Black leaders must cease touting for Western partisan support to fuel the fires of Black/Black confrontation.

The levels of Black/Black confrontation have now reached proportions which entitle one to view events as events threatening to make political violence endemic in an emerging civil war. More violence is now being directed by Blacks against Blacks than is being directed by Blacks against the State or against apartheid. Inkatha deplores this escalation of Black/Black confrontation and it continues to work for unity of purpose in a multi-strategy approach.

ISRAEL AUGUST 1985

CLARION CALL

Volume 1, 1985

Disinvestment

As the numbers of unemployed grow, what do Black workers want?

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Investment in SA —

a strategy for liberation

THE disinvestment (or divestment as Americans call it) debate is gaining momentum both in South Africa and abroad.

This issue of Clarion Call highlights the controversy and the viewpoint of Black South Africans and their elected representatives who believe that investment and job opportunities are a strategy *for* liberation.

Waiting for a day's work at a township meeting place for job seekers. Today millions of Blacks in South Africa are unemployed.

While totally opposed to the apartheid policies of the South African Government, they are convinced that disinvestment will only increase the suffering of their fellow Blacks and will not hasten the day of their political liberation.

This report presents the views of hundreds of thousands of Black workers and their families (altogether numbering millions) who have massed at rallies throughout the country to voice their opposition to disinvestment.

It shows pictorial evidence of these people who have stood up and asked to be counted — men and women who have cried "NO!" to disinvestment across the length and breadth of the country. People who have crammed into marquees in the heart of rural KwaZulu and who have packed stadiums in the sprawling city of Soweto outside Johannesburg and in other Black townships throughout the Reef.

They see disinvestment as a misguided and simplistic strategy that has no chance of any real success.

And they query why the proponents of disinvestment both in South Africa and abroad have never tried to consult or obtain a mandate from ordinary Black workers — who are the ones disinvestment will effect the most.

Only one Black leader has done so — Chief M G Buthelezi - and their response to his question: "Do you believe in disinvestment as a strategy for liberation?" has been an overwhelming "NO!"

Blacks understand the issue and its implications. They are capable of speaking for themselves. They know what is in their political and economic interest.

While grateful for the moral concern of people from other countries, Black workers feel they should direct their own struggle for liberation.

They ask whether good people in New York, Washington, Quebec, London, Bonn, The Hague, Paris, Rome, Sydney and other world centres really understand the other side of the disinvestment debate in faraway South Africa.

WHITE HOUSE TALKS

"... disinvestment and the economic isolation of South Africa will bring about increased immediate hardships and starvation and will increase disease in the short term — without medium and long term gains to balance deprivation and suffering ..."

Chief M G Buthelezi at a meeting with President Ronald Reagan, Washington, February 4, 1985.

THE following is the text of the thoughts expressed to President Ronald Reagan by Chief Buthelezi during their White House meeting.

Mr President, Sir, the time that you can afford to devote to the South African question must be counted in minutes per month rather than in hours or days.

Politically you are the most powerful man on earth and your responsibilities extend into a multitude of domestic and foreign issues and are global in scope.

That you have taken the initiative to invite me to meet you here in Washington and are now devoting time to talk to me is a signal to every decent Black South African that you are genuinely concerned to do something constructive to bring about change in South Africa.

On behalf of Black South Africa, I thank you for inviting me here and for the interest you are displaying in our plight.

It would appear to us that the constructive engagement policy will necessarily involve the United States in a carrot and stick approach, and we have taken heart at glimpses of the stick in your recent statements.

You have said: "There are occasions when quiet diplomacy is not enough ..." And you have remarked that the United States "... has said on many occasions that we view racism with repugnance ..." Mr President, we appreciate this forthright condemnation of apartheid.

You Mr President must go down in our history as the first American President who had the courage to clutch the thorny South African nettle boldly and publicly. The United States never had a South African policy. It now has one. Those who follow in your footsteps will inherit your initiatives and will have to build on things that you have started.

Your assessment is correct, Sir, that it is now time that the South and Southern African situation was placed permanently on the American political agenda.

Because your policy is about us and our country and because it is about our future and the future of our children, I have a duty and a democratic right to weigh up what you, Sir, are aiming to do and to comment publicly on the merits of what you and your administration are attempting to accomplish.

You will hear conflicting voices from Black South Africa — some made strident by the media amplifying machine and others made cautious and sober by the demands which are placed on real leaders with mass followings. I hope, Sir, that you will listen to the latter, even if you have to take cognisance of the former in your own domestic party political situation.

The United States is a great democracy and the American people should feel obliged to give added weight to the views expressed by leaders who involve themselves in constituency politics where they sink or swim on their ability to gather demonstrable Black support which can be directed towards political objectives.

I, Sir, founded Inkatha as a liberation movement a short ten years ago and in the space of one decade Inkatha has grown to have nearly a million paid-up members.

I am a leader chosen by millions of ordinary Black South Africans from every walk of life and I represent people in both rural and urban areas. In addition, I am a leader by hereditary right and history itself demands and I remain as a committed leader in the struggle for liberation.

What I say to you, Sir, is acclaimed by millions and on behalf of Black South Africa I constantly reiterate that we need Western involvement in the development of South and Southern Africa. We need American engagement if it is constructive.

Western leaders should not gamble the future of South and Southern Africa nor should they jeopardise the role that the West can play in developing and stabilising Southern Africa as a region on the strident and dubious voices expressing radical rhetoric so often amplified by the media.

I ask you, Sir, to continue weighing up your responsibilities and the responsibilities of America against the background of what effective Black leaders with real mass constituencies have to say.

History has taught me and Black South Africa that past Western democratic posturing and verbal condemnation have left apartheid intact. I see today in the United States an upsurge of genuine concern about apartheid. But I also see a great upsurge of verbal condemnation of apartheid and the kind of posturing which has been of such little significance in the past.

There is a storm brewing in the

Continued overleaf ...

United States about American responses to apartheid and I think that time will tell that many of those who are involved are serving double agendas.

They may well be indignant about the lack of even minimal human rights for Blacks in South Africa, and they may well be genuine in their indignation. For this indignation and genuineness I am deeply grateful.

They may, however, have other agendas in which apartheid is being used as an issue to beat you, Mr President, and to discredit your administration.

Some are making a political football out of our suffering, and I ask you to stand firm and to do whatever you can to de-politicise the question of what America can do to aid those who are not involved in the struggle for liberation.

Apartheid has a kind of evil virulence and it has a proven durability. There are many who are making the tactical error of attempting to encapsulate this virulence in an isolated South Africa shut off from Western influences.

The indiscriminate economic, social and political isolation of South Africa, applied mindlessly and regardless of consequences for each action, will deeply and adversely affect the non-violent democratic struggle to bring about radical change. The total isolation of South Africa would favour those who aim to bring about change by violent means and to establish a socialist or even communist state.

It is indisputably true that Whites cannot manage mining, industry and commerce on their own and that the sustained economic growth to which they aspire can only be achieved by moving towards parity between Black and White.

White political apartheid is now under very real siege by economic reality and the non-violent transition from apartheid society to a society based on the principles of open democracy will be greatly enhanced by a sustained high rate of economic growth.

Disinvestment and the economic isolation of South Africa will bring about increased immediate hardships and starvation and will increase disease in the short term, without medium term and long term gains to balance deprivation and suffering.

I am acclaimed by millions when I say that while the struggle for liberation in South Africa needs Western inputs, it is primarily a Black South African struggle which we ourselves wage for our own future.

I speak for millions when I say that we see tactical and strategic advantages in a rapidly growing economy. The West, Mr President, must allow us to determine our own tactics and strategies and to charter our own course into the future of our choice.

Black South Africa knows that there are no easy solutions to the apartheid problem, and we certainly know that an armed struggle which continues to fail and which exacts terrible prices will destroy the foundations on which we will one day have to build a future.

Quite apart from the moral issues involved, and quite apart from the fact that an armed struggle tends to shape society for authoritarian governments of the future, I have other concerns about the use of violence.

Black South Africans know that without bases in neighbouring states, and without international diplomatic, logistic and material support and, furthermore, without areas inside South Africa which can be liberated, the armed struggle must fail.

Whether, Mr President, your bold grasping of the South African thorny nettle in your formulated constructive engagement policy will bear the fruits that all democrats hope for, remains to be seen.

- Experience gathered over generations makes me and my fellow Black South Africans sceptical about the role of the West in our struggle.

I believe you are right in formulating a South African policy. I believe that within this framework Dr Chester Crocker has played a positive role in Namibia but the vast majority of ordinary Black South Africans are not yet aware of anything meaningful in their own lives which has flowed as something new from America because of constructive engagement.

I and all Black South Africans applaud the emphasis which has been placed on aid for education programmes in South Africa.

The struggle for liberation would be strengthened by American-backed educational programmes and would be strengthened even further if educational aid were extended to health education and educational programmes which are complementary to the in-service training programmes aimed at vocational advancement in work situations.

I am particularly aware of Black South Africa's appreciation for the aid which is given for humanitarian purposes. American assistance given to us for drought relief and to help us meet the terrible plight of those devastated by floods by cyclone Demoina was greatly appreciated.

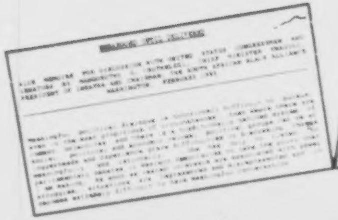
Mr President, the responsibility to liberate South Africa is ours, but the West must not under-estimate the desperate need to provide humanitarian aid to suffering communities involved in our struggle.

When ordinary suffering humanity is sustained by aid programmes, more morale in the struggle for liberation rises. The raising of Black South African morale is something the West can do and should do, and will I hope accept as a very important input to the struggle.

Mr President, may I in conclusion express the real fact that the value of educational and other aid programmes backed by the United States will have a greatly diminished value if they are based on partisan American assessments of the Who's Who in Black South African politics and not on needs and opportunities.

The need to be blind to Black party political affiliations in South Africa cannot be over-emphasised.

I plead for aid for Black South African organisations across a broad front of Black South African activity and I ask you Mr President and your administration to do everything that can be done to remove aid to Black South Africa from the American party political arena.



American dialogue

Influential Americans including Senators, Congressmen and the chief executive officers of large corporations heard Chief Buthelezi explain during his recent visit to the US that the crucial question now was whether or not big companies could play a positive role in the process of helping to bring about change in South Africa.

He told them: "I am watching with some interest how American companies will in fact respond to the current situation. If big business has a job of work to do in South Africa beyond the turning over of dollars, if America as the world's leading industrial nation, and the world's leading democratic country, uses big business as a party political tool, and if activists and lobbyists in the United States beat big business in the field of public relations and mount the kind of pressures on big business which forces their hand in South Africa, then we will be witnessing something we have not yet witnessed before."

In the past big business interests in the West had participated in the development of the South African economy and had done so within the framework of apartheid. They had been party to the fact that economic development had favoured Whites at the expense of Blacks. There was now no doubt that the West generally and big business in particular were — in the last generation — blind to the horrors of apartheid. This was not the case now and American businessmen had "seen the writing on the wall."

America, he said, had the kind of massive wealth which afforded it the luxury of being involved in South Africa or not being involved. Big business in America was aware of that power and one of its options was to withdraw now in the certain knowledge, and perhaps even capitalist arrogant knowledge, that they were not foregoing involvement in the development of South and Southern Africa forever.

He said Congressmen and Senators in particular would be receiving conflicting signals from Black South Africa. "Black South Africans had the right to differ with each other and to pursue differing aims and objectives. However, as a democrat he believed that the final arbiter of who was "acceptable" and who was not acceptable, were the masses of ordinary Black people. No other organisation in the country was endorsed by ordinary people as effectively as Inkatha was endorsed. For that reason he asked that his observations be taken seriously.

Chief Buthelezi asked Americans to "employ their indignation skillfully and rationally" and to bear the following nine points in mind:

❛ 1 The practice of democracy is deeply and adversely affected by circumstances of mass poverty. I ask Americans to remember that Black South Africans do not wish to destroy the foundations of future progress by indulging in the politics of anger which is satisfying in the short term but detrimental in the medium and long term.

2 The majority of Black South Africans seek to bring about fundamental changes in South Africa through the politics of negotiation, and by employing non-violent means.

3 Ordinary Black South Africans see politics as a bread and butter thing and as a vehicle for improvements in their standard of living and in individual family circumstances.

4 Black South Africans are intimately aware of White power and that it will be used to protect Whites preferentially if South Africa began to feel the effects of economic isolation.

5 Ordinary Blacks do not distinguish between those among them who were forced to live in urban ghettoes by apartheid and those whom the same apartheid forces to live in rural areas. For them, the rural/urban dichotomy does not exist as a political dimension, and for them life under apartheid rule is as obnoxious for Blacks in apartheid-created townships, or apartheid-created so-called homelands.

6 Black South Africans do not wish to pay terrible prices for failing strategies and they neither believe that the armed struggle, nor the effective economic isolation of South Africa, could succeed in destroying apartheid for the forseeable future. Both the armed struggle and increased economic deprivation, which Blacks would experience as the result of effective economic sanctions against the country as a whole, would involve Blacks in paying heavy prices for gains which would be minimal if there be any gains at all.

7 Black strategists with their feet on the ground are aware that people who suffer as we suffer, experience losses of morale in the face of the prospects of greatly increased suffering. It is the taste of something better which galvanises impoverished people to demand more and which creates a sustained determination to struggle for that more.

8 Righteous indignation which vents itself against South Africa's White apartheid bosses but which also extolls casualties from Blacks, must be rejected, as the use of bombs against strategic and military targets in South Africa which kill and maim ordinary Black citizens in the process, must be rejected.

9 Americans must always remember that the international might of the United States should not be used to dictate to Black South Africans about what they should do and what they should not do, and what they should suffer and should not suffer, as Americans give vent to anger and indignation against the horrors of apartheid.❜

Kennedy and Buthelezi ... what they said.

SENATOR Edward Kennedy, in his well publicised tour of South Africa in January, made it clear in his speeches that he plans to "offer specific recommendations on divestiture" to the American people and to the Congress of the United States.

In an address to 600 members of various Chambers of Commerce in Johannesburg, he said that neither he nor the American people could accept statements of goodwill as substitutes for concrete actions to achieve fundamental rights in South Africa.

Since his return to America, newspaper reports from there have speculated that the Senator is set to "turn the heat on American businesses operating in South Africa" as a prelude to championing tougher economic measures against South Africa.

It is believed Senator Kennedy is likely to sponsor legislative measures in the United States that will call for "selective disinvestment" or "constructive disengagement" by American companies found to be supporting or entrenching apartheid.

There is doubt whether Senator Kennedy, who has already co-sponsored Bills urging a stop to new American investments in South Africa, will call for total disinvestment immediately.

Kennedy strategists are expected to seek out views in the US on how best to monitor the activities of American companies who have links with South Africa and how others can put pressure on the country.

In an interview with the Johannesburg Sunday Express, Senator Kennedy was asked what measures by the SA Government he would regard as being far-reaching enough to make him review his anti-apartheid campaign.

Senator Kennedy said they would include "expansion of the vote" to people of all races, restoration of South African citizenship to Blacks and a halt to forced removal and resettlement of Blacks.

He told South African businessmen that private communications of concern from corporate leaders in SA to Government officials could "... only be gestures, words spoken on the wind ..." if business was also busy implementing pass laws against Black families and accepting and aiding other measures which entrench apartheid.

He said no test was clear for South Africa now, no issue more closely watched in the outside world, than the fate of the union movement.

"To have unions is not enough, to respect their rights is essential," he said.

Senator Edward Kennedy in South Africa.

Senator Kennedy added that to fire workers for striking made a mockery of any claim to free collective bargaining.

The state of South Africa's unions was also inextricably related to the status of Black people in the rest of the legal system.

On his return to America, Senator Kennedy said he had found that "only Whites in South Africa oppose disinvestment ..."

This statement was slammed by various Black leaders and academics who said they were "astounded" that Senator Kennedy had programmed his memory so selectively.

In an editorial headlined "Amazing forgetfulness," the Durban Daily News pointed out that Senator Kennedy could hardly have missed the central point made at a prayer breakfast he attended — hosted by Chief M G Buthelezi.

It said the "... leader of the country's largest national group" had told him that not only the Zulus but most ordinary working Blacks opposed disinvestment.

Hundreds of demonstrators had greeted him in Durban with pro-investment banners and Black businessmen have also spoken personally to him expressing their opposition to disinvestment.

The Director of the Centre for Applied Social Studies at the University of Natal, Professor Lawrence Schlemmer, says research among working class Blacks has shown that they are against disinvestment.

Research among more politically polarised Blacks might conclude, he said, that they supported disinvestment.

"It therefore depends on which Blacks you are talking about," Professor Schlemmer added.

DURING his meeting with Senator Edward Kennedy in Durban, Chief M G Buthelezi, Chief Minister of KwaZulu and President of Inkatha, made it clear that he believed that the problems of South Africa would be resolved within South Africa by South Africans.

He said that if there was one message which the United States Government and other Western Governments needed to hear was that Black South Africans were "... ordinary people who behave as human beings behave the world over."

South Africa was in a situation of flux and change in which opinion was deeply divided about what to do and what not to do and about the goals which Blacks should be striving for.

The history of the Black struggle for liberation could be written as one Black failure after another to bring about radical change. Failure after failure had produced one new attempt after the other and Black politics was characterised by raging disputes about what next should be done and how it should be done.

It was not suprising that Black groups in South Africa were at loggerheads with each other about both aims and objectives and about tactics and strategies to achieve them.

Chief Buthelezi went on to say that what has become known as the Black Consciousness grouping tended to look towards a socialist future. This rejection of the free enterprise system and capitalism as a philosophy was not suprising.

What little free enterprise that had emerged in South Africa had not benefited Blacks — capitalism had been misused.

Black experience was one of political subjugation supported by economic oppression and the experience of seeing successive governments siding with big business to maintain the status quo.

The step beyond the call for socialism was the step into the armed struggle.

"Those who reject the country's existing institutions and its political and economic order must necessarily tend towards revolutionary approaches using revolutionary tactics and strategies," he said.

Like every other Black leader Chief Buthelezi said he had to consider carefully revolutionary options "... and I did so while the fires of deep anger burnt in my breast ..."

Black South Africans would be, he added, the last people on the continent of Africa to triumph over racist-inspired social, economic and political oppression.

However, the victory of Africa had taught him that the political victories in struggles for liberation were "but first steps" into a tortuous future.

Chief Buthelezi assured Senator Kennedy that "my views have not changed one bit" since he had discussed the South African situation with his late brother, Senator Robert Kennedy.

"In short, I am and have always been an opponent of the National Party Government which rules us without consent in South Africa ..."

At his most recent rally at the Jabulani Stadium in Soweto, 30 000 people turned out to welcome Chief Buthelezi.

"THERE'S NO SOCIALIST MAGIC FOR AFRICA ..."

IT HAD been "a sobering experience" watching, over the years, grand experiments in African Socialism, Chief Buthelezi told Senator Kennedy.

He had seen just how little socialism had done for so many people in so many parts of the continent.

"Thus, when I seek wisdom from Africa and when I draw on African experience, I am cautioned by other people's experience of revolutions striving for a socialist future ...

"As a Black leader faced with the realities of South Africa here and now, I dare not take models of liberation from elsewhere and apply them simplistically to our own circumstances.

"The fundamental lesson I have learnt is that the process of bringing about radical change is the very process which lays the foundation for the future.

"So when I, like other Black South Africans, have time and again examined the utility of revolution and the desirability of rejecting capitalism in favour of socialism or communism, I have done so soberly ..."

Chief Buthelezi said 50 percent of all Black South Africans were 15 years old and younger. There was vast unemployment and it was Blacks who were unemployed or under-employed.

There were vast backlogs in essential services — in housing, medical care and in education. It was Blacks who suffered because of these backlogs.

Rural areas were desperately overpopulated and agrarian revolutions would only alleviate suffering. They would not bring about any real change in the quality of life of the people.

"There is no socialist magic and no communist magic which will feed the hungry and house the poor," the Chief emphasised.

After looking around Africa and the Third World, he had become convinced that the free enterprise system held out more hope for "people in our circumstances," than any other system.

"The free enterprise system is the most potent development agency at our disposal," he said.

"I therefore find myself unable to commend an idealist socialist future to my people — no matter how attractive the trappings of socialism appear to those who have suffered so desperately and for so long from oppression which has been inspired by the West and supported by the West ..."

Senator Kennedy's reaction to these remarks, made after he left Durban and had arrived in Cape Town, somewhat stunned Chief Buthelezi and those who attended the breakfast.

Senator Kennedy said that "nothing" Chief Buthelezi had told him had "... convinced him of the validity the homelands system ..."

This subject was not discussed at all.

Queueing for work at a labour bureau

DECISIVE ISSUE IS THE VOTE

SENATOR Kennedy reminded South Africans time and time again that the decisive political issue in the country was full and equal citizenship for Blacks.

"It is disheartening to hear it said so often and with such confidence that progress is being made in this country — only to learn that the basic question of political participation for Black South Africans is hardly ever raised, and never really taken seriously, in the dominant precincts of White power. Even the talk of reform seems to stop before it touches the ballot box."

Senator Kennedy said Whites in South Africa feared the possibility of violence and chaos.

"Yet, State-spawned and State-sponsored acts of violence only nurture the reality behind the fear and draw the chaos closer.

"The repression which reaches across the years, from the labour rebellion in the Rand when 700 people died in 1922, to the jails and pass courts of 1985, has not killed the yearning of Black people; it renews itself with each generation.

"And with each cycle of disappointment, of hopes dashed and beaten down, of children imprisoned and protest struck down, surely the ultimate danger grows greater."

The course of resistance was the one most likely to "make the worst fears come true ..."

He quoted his late brother, President John F Kennedy, who said in 1962: "Those who make peaceful revolution impossible will make violent revolution inevitable."

"My brothers and sisters ... do you want disinvestment?"

AT MASS rallies throughout the country, Chief M G Buthelezi, the Chief Minister of KwaZulu and President of the 980 000-strong Inkatha movement, asks this question:

"Do you support disinvestment as a strategy in the struggle for our liberation?"

Not once has he received a mandate from ordinary Black South Africans to pursue the tactic.

The following pages contain extracts from Chief Buthelezi's speeches during the past year at meetings which were collectively attended by more than a million people.

At the Thokoza Sports Ground in the East Rand he asked: " ... You my brothers and sisters, are ordinary South Africans. Do you want disinvestment? Do you want South African factories to close down so that you lose your jobs?

"Do you believe that the economic boycott of South Africa will pay a political dividend for you?"

Chief Buthelezi then told the audience that every time he asked these questions people, the same as they had, replied "No!"

He added that this demonstrated that Black South Africans were just not prepared to destroy the little bit that they had in pursuit of tactics and strategies that would not work.

"In the present economic climate how could I dare say that Black people must lose more jobs than the jobs we have already lost and are going to lose?"

He went on to say that European governments and organisations who had lavished millions of rands on Black South Africans involved in the struggle, frequently did so "with strings attached ..."

"When I and my emissaries have gone abroad to seek European and North American partnerships in the pursuit of our aims and objectives, we have again and again been bluntly told that we cannot expect help unless we join in the cry for disinvestment," said Chief Buthelezi.

He told the crowd: "Politically impoverished White liberalism in Europe and North America does not hear your voice, does not hear you rejecting disinvestment as a strategy.

"We in Inkatha cannot sell our souls for money and we refuse to dance to the tune of those who hold the purse strings.

"We value whatever help we can get, but in the final analysis we know that we Blacks of South Africa stand on our own and have to rely on our own resources when it comes to the push."

Very often, he went on, those who had "so much money to lavish on us", not only demanded that Inkatha join in the cry for disinvestment but also that they subscribed to the principles of the armed struggle.

"Every one of us is prepared to die for what we believe," he said.

"Over generations we have demonstrated our valour in battle but this valour does not make us stupid and we know beyond any shadow of doubt that now and for the forseeable future those who are committed to the armed struggle do no more than turn our children into cannon fodder.

"If I followed double agendas and talked out of both sides of my mouth at the same time, Inkatha too would share in the largesse from Western Europe and North America ...

"But when a Black political movement sells its soul and sells the birthright of the people in order to qualify for foreign aid, it is doomed.

"The struggle for liberation must be waged by South Africans through democratic opposition within the borders of South Africa ..."

Mr Ntwe Mafole, National Organiser of Inkatha's Youth Brigade.

Mr Marthinus van Schalkwyk, ASB chairman.

Mr Musa Mkhize, an Inkatha Youth Brigade leader.

Tough talk at historic meeting

South Africa's two largest youth movements, the Afrikaanse Studentebond (ASB), and Inkatha's Youth Brigade searched for common ground for ongoing dialogue at a recent meeting at the Rand Afrikaanse University in Johannesburg.

The historic talks, which were said to have been watched closely by the National Party, were opened by KwaZulu's Minister of Interior, Dr Dennis Madide, who is also chairman of Inkatha's political, constitutional and legal affairs committee. They were closed by Dr Gerrit Viljoen, SA Government Minister of Co-operation, Development and Education.

The session broke into bitter acrimony from time to time but at the close the leaders of the two groups, Mr Keith Musa Zondi of Inkatha and Mr Marthinus van Schalkwyk of the ASB, issued a joint statement on issues on which the two parties had reached consensus. KwaZulu's delegates also included Inkatha's national youth organiser, Mr Ntwe Mafole.

Points agreed upon included: That South Africans, Black and White were one people with one destiny; that there should be one citizenship for all people; that people should be free to reside where they wished, own ground and become qualified in any trade or profession; that South Africa belonged to all and must be one State with one common destiny, economy, defence force, destiny and so on.

Areas of often heated disagreement were the total rejection by the ASB delegates of one-man-one-vote in a unitary state, Black majority rule and the need for a national convention.

Inkatha delegates told Dr Viljoen that they felt they were essentially leaving the conference "empty handed" and repeated the call of the President of Inkatha for a declaration of intent from the South African Government recognising that the ultimate destiny of the country would be one in which there would be power sharing between Blacks and Whites.

In his opening address Dr Madide stressed the point that Inkatha (with its stated aims of non-violence and negotiation) recognised that most Whites feared the numbers of Blacks and therefore refused to listen to any talk of one-man-one-vote in a unitary state.

Inkatha was therefore prepared to accomodate this fear and willing to look at alternative forms of democracy. There were enduring Federal systems throughout the world, for example, which had proven their utility for generations.

Inkatha, he added, would not lay down impossible preconditions for the politics of negotiation.

Dr Madide added that while the South African Goverment was committed to the new constitution which aimed at a racist dominated confederal system, Black goodwill in the politics of national reconciliation was sacrificed.

Society today had to deal with Black anger as well as White intransigence and one could not deal with one without the other.

"What we will eventually achieve depends almost entirely on doing something which will most minimise Black anger and break White intransigence," he said.

Dr Madide read in detail evidence that Inkatha gave before the Schlebusch Commission in 1979.

The Commission was charged with investigating a new constitution for South Africa. It was a result of this Commission that the present tricameral Parliament came about.

It is history that the tricameral constitution totally excluded Blacks and that Inkatha has totally rejected it.

Dr Madide said he was aware that Blacks and Whites shared a co-responsibility in setting the stage for vast new developments and vast new achievements in the affairs of the country.

"But I want to put it rather bluntly that a change of White heart, a break away by Whites from traditional fears and prejudices, is a prerequisite for this partnership," he said.

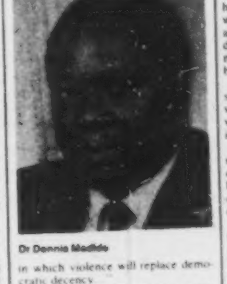
"I believe that Blacks hearts have sustained goodwill as their contribution to the partnership we needed. I do not believe that White hearts have thus far in fact justified the faith and hope of black goodwill ..."

All the Inkatha speakers told the conference — in one way or another — that they believed that today, in 1985, South Africa's social, economic and political systems defied international norms of morality.

They defied Christian perceptions of man and society and that South Africa was still locked into archaic forms of social, economic and political behaviour.

Dr Madide, in summing up, said:

"Despite all the positive things we can say about the conditions which are ready for bringing about positive change in South Africa, we live under the very real threat of vast under-achievement and the degeneration of our circumstances into circumstances in which anger will replace reason and in which violence will replace democratic decency."



Dr Dennis Madide

Black goodwill and a commitment to democratic decency was in the hearts and minds of millions of Blacks and this, surely, was sufficient for Whites to break away from intransigence, fear and prejudice.

In a society claiming to be based on Christian principles, all evidence pointed to object failure on the part of the ruling class to live up to its principles.

There was White prejudice which viewed the current wave of unrest sweeping the country as barbarism justifying apartheid. There were still Whites who supported a society where the great divide between haves and have-nots was a racial divide. There were Whites who supported pass laws and influx control laws because they did not believe in democracy and could not introduce a system of government by consensus.

Worst of all, there were Whites who simply did not believe in love and the will of God and who refused to live with their fellow Black South Africans in equality and love.

The new tricameral constitution was reducing a great many areas to a state of ungovernability. It was now patently clear to all clear thinkers that Whites could not govern Black townships either directly or indirectly.

It was time that the National Party took the extra step of recognising that the new constitution's exclusion of Blacks in national decision-making could not remain a permanent feature of South African politics.

If the State President was to issue a statement of intent together with Black leaders recognising that the ultimate destiny of the country was one in which there would be power-sharing between Blacks and Whites, the politics of negotiation and the politics of hope would take a great surge forward.

ALL THESE PEOPLE SAID 'NO!'

Buthelezi flays 'youth gone mad'

The Natal Mercury, Thursday, February 14, 1985

AN ESTIMATED 30 000 people at the Jabulani Amphitheatre in Soweto roared their approval when Chief Buthelezi had this to say about the disinvestment issue:

❛ It is tragic that when we Blacks differ we resort to calling each other names.

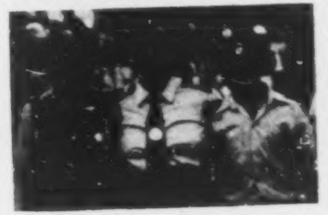
I have experienced denigration merely because in my talks abroad I have always argued that the majority of Black people in this country have never given me the mandate to go to multi-national companies abroad and to tell them to withdraw their investments in South Africa — as our brothers in the external mission of the ANC have urged them to do all these years.

I have argued that the majority of Black workers have not yet expressed themselves in favour of disinvestment either directly or through their trade unions.

I have argued that those who argue in favour of disinvestment need to visit labour bureaux's such as the one in Market Street to see the number of Blacks that queue up for days on end for the opportunity to get a job.

And yet there are people who talk of those of us who argue in this way in favour of investments as if we are traitors to the Black cause.

It is time we considered our strategies and our reaction to differences we have on strategies. ❜



IN A statement issued at Ulundi, the capital of KwaZulu, Chief Buthelezi said he believed that foreign investors could play "a vital role" not only in the development of South Africa but on the whole sub-continent.

❛ South Africa has an industrial base which the whole sub-continent needs, he said.

To destroy that base for immediate political needs is short-sighted in the extreme.

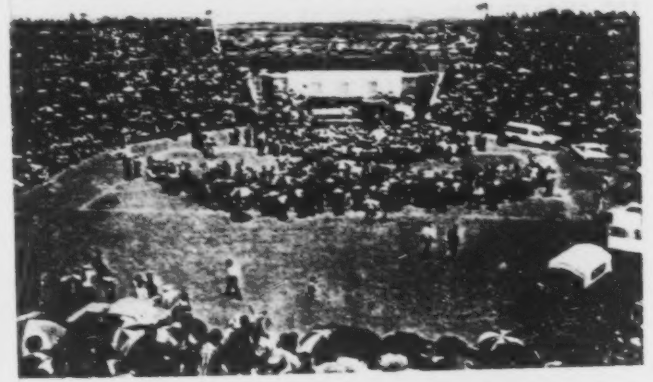
South Africa's Black population is growing at a rate on three percent per annum and the vast unemployment and underemployment which now exists will soon become far more problematic than it has ever been before.

Unless this country's economic development is hastened dramatically, and unless we have sustained rates of economic growth, the victory we struggle for will only lead to demands on future governments which will be impossible to satisfy.

Speaking to President Nyerere on one of my visits to Tanzania, he described his battle with post-liberational problems of poverty. Many Third World African states have had to do the same.

We have the advantage in South Africa of being able to look back over time at the experiences of others during their struggles for liberation.

I am quite determined that in my own leadership, I will not exhort Black South Africans to seek immediate political gains at the expense of destroying the foundations of the future. ❜



"... the free enterprise system remains the most powerful system man has ever devised which is capable of fostering sustained economic growth ..."

CHIEF Buthelezi told another rally in Ulundi that Black South Africans were aware of the fact that they would not be able to live off the land in a post liberation period.

While every effort would have to continue to be made to make rural areas self-sufficient in food, the country as a whole had passed the line beyond which industrialisation was synonymous with survival.

A great deal could be said about the relative merits of socialism and capitalism.

However "... when all this is said and done, and whoever scores points off others in polemic academic debates, the free enterprise system remains the most powerful system man has devised which is capable of fostering sustained economic growth ..."

Economic systems and political systems went hand in hand.

The only real future worth having in South Africa was a future in which the society would be democratic and the country's economic organisation would be one in which the value of the free enterprise system was maximised.

Millions of Blacks were dependent on their cash income and millions would starve within days and weeks at the most if work opportunities dried up.

Disinvestment lobbyists who sought to isolate South Africa economically put their own political purposes before the good of the country and before the good of Black South Africans.

TRADE UNION LEADERS SLAMMED FOR NOT CONSULTING MEMBERS

Not one major union in South Africa is known to have consulted or obtained a mandate from its rank and file members on the disinvestment issue

CONCERNED groups of Black workers have expressed their dissatisfaction with what they claim is a "dangerous" lack of consultation between union leaders in South Africa and rank and file members.

Chief Buthelezi acknowledged at his last Soweto rally that he had received delegations from workers who were extremely unhappy about the situation.

The Chief said he had supported trade unions all his life and had always championed trade unionism.

"I have done so because I see workers and peasants as the salt of the earth and trade unions as vital to the struggle to liberate this country from social, economic and political oppression.

"I stand behind trade unionism but, some leaders are destroying union power in vain and stupid and costly mistakes.

"... some boast that this country can be reduced to ungovernability by violence and rioting ..."

He said Inkatha's nearly one million paid-up members and many thousands of others who supported Inkatha, represented a cross-section of Black South Africa.

Many were members of a wide range of other organisations, including trade unions, in addition to belonging to Inkatha.

Hundreds of thousands of Inkatha's members and supporters were therefore members of organisations whose executives had affiliated to the United Democratic Front (UDF).

"And yet the UDF attacks Inkatha," said Chief Buthelezi.

"In attacking Inkatha they attack the sentiments of the very people they claim to represent ... and I am getting a constant feed-back from Inkatha members who are deeply disturbed about what the executives of some of the other organisations they belong to are doing ..."

Chief Buthelezi went on to say that Inkatha's executive had learned over many decades that "... leadership that cannot be disciplined by members have always led people astray ..."

"They have always done things which in the end people reject," he added.

"The United Democratic Front and some of the executives of its affiliate organisations act high-handedly.

"Who, for example, elected the members of the Transvaal Stay-Away Committee?

"Who was consulted about the tactics and strategies that the committee adopted? What procedure was used to appoint its chairman?

"How much consultation was there between the UDF's national leadership and its affiliate organisations before the UDF threw its weight behind the stayaway?

"There was a glib orchestration and an under-hand power-play to deceive the world that the stay-away was democratically decided."

Chief Buthelezi said all Blacks knew of the hard work which had gone into forming trade unions to represent them.

He said: "Now that the workers of this country have achieved something at last, there are those who come jealously to snatch the fruits of their struggle from them.

"Trade union organisations which are used for purely political purposes will cease to benefit workers.

"Black political forces which move in, like jackals and vultures, to feed on the success of workers, must be rejected.

"There must be consultation between political forces and worker forces. There must be combined strategies, but whatever workers do as trade unionists, they should do as trade unionists.

"We all know that there was not proper consultation between workers and those who called for the stay-at-home (work boycott) demonstrations.

"We know that the unions themselves were outmanoeuvered and that the rank and file workers are now left to suffer the consequences that flow from ill-conceived action ..."

Tutu will call for sanctions, unless ...

Bishop Desmond Tutu addresses Senator Edward Kennedy at Jan Smuts Airport before the Senator's departure from South Africa. Dr Allan Boesak is pictured, left, listening

VARIOUS newspaper reports have claimed that Nobel Peace Prize winner, Bishop Desmond Tutu, has warned Western governments against giving aid to South Africa.

Bishop Tutu was quoted as saying in Frankfurt in January: "South Africa is capable of looking after its people but the Government is not carrying out its obligations. If the country were to disarm, a considerable amount of funds could be released."

Bishop Tutu is also said to have urged Western nations to press South Africa for improvements in human rights — otherwise he would seek sanctions if Western firms did not aid Black workers.

Bishop Tutu was speaking during a visit to West German evangelical churches which raise more than R2-million a year for the South African Council of Churches, of which Bishop Tutu was general secretary until February when he was installed as Bishop of Johannesburg.

Bishop Tutu said Western nations should insist on the abolition of banning orders and the ending of forced removals and demand that all those detained without trial in South Africa be released or brought to court.

"... what must our people do which will awaken in the West a real revulsion which will lead to action to dismantle apartheid?" Bishop Tutu asked.

Firms should house Black workers as family units and free trade unions should be introduced.

"If this is not done within 18 to 24 months, then I will call for punitive economic sanctions against the South African Government," he said.

He went on to say that the situation in South Africa was already volatile and violence could start exploding in rural areas as well as towns.

A report quoting the Dutch Foreign Ministry in the Hague said Bishop Tutu had said South Africa's Blacks needed two years to find a "peaceful solution" to their problems.

During talks with the Dutch Foreign Minister, Mr Hans van den Broek, Bishop Tutu said the international community should not impose economic sanctions against South Africa's apartheid Government for the next two years.

If no solutions were found within those two years, international economic sanctions should be imposed, the spokesman quoted the Bishop as saying.

Bishop Tutu also told Mr van den Broek that international political and economic pressure on the South African Government should be increased gradually.

Bishop Tutu, together with Dr Allan Boesak, President of the World Alliance of Reformed Churches, invited Senator Kennedy to South Africa on behalf of the United Democratic Front and the South African Council of Churches.

The tour was marked by various factions hostile to Senator Kennedy — in particular the Azanian People's Organisation (AZAPO), some groups from within the United Democratic Front, the White right wing and also White liberals and businessmen.

Bishop Tutu said he was "saddened to the point of tears" that Senator Kennedy was forced to cancel his final speech in South Africa because of a demonstration by AZAPO.

A report in The Times of London said Senator Kennedy's tour had served "... only to bring to the surface the polarisation among the people whose cause he sought to champion."

What the papers say

THE South African public should have no illusions regarding the seriousness of the disinvestment issue. Both English and Afrikaans newspapers are following developments in detail.

Of considerable interest is the operation of the Sullivan Code of Conduct for American firms operating in South Africa.

The code, developed in 1977 by the Rev Leon Sullivan, a Baptist preacher and social activist who has a seat on the board of General Motors, has recently come under fire from various quarters.

Its purpose is to establish fair employment practices in South Africa and to channel US business resources into activities that promote social and economic improvements for Blacks.

Chief Buthelezi has said publicly both in South Africa and in the United States that while applauding its principles, he believes its "monitoring" structure should be reassessed.

Its founder, Mr Sullivan, no longer believes adherence to it should be voluntary and is backing congress moves to make it mandatory. As a result, the US State Department is said to be "putting pressure" and "twisting arms" to get US companies to sign the code voluntarily.

However, a Washington study by a research organisation with close ties to the Reagan Administration, the Heritage Foundation, says the code has created a controversial backlash with major foreign and domestic policy implications for the US.

Tutu says he'll call for sanctions
FRANKFURT
Black opinion 'ignored'
SA prepares for U.S. cash pull-out
NY set to get tough with SA
Blacks against disinvestment

The code is regarded by some companies as "low grade blackmail ..." according to the report.

By 1983, 146 of the 350 US companies in South Africa had become Sullivan signatories and had spent more than 78-million dollars in pursuit of the principles' goals.

Complaints have risen because the participants have to deal with long questionnaires on their activities in South Africa and must submit to an annual audit and pay high fees.

Many have had to spend more than R160 000 in the paperwork alone — only to receive a failing grade from the auditors.

Some have refused to invest in the time and money and as a result 30 of the 146 signatories were dropped from the Sullivan list in 1983.

Companies with "failing grades" can be the targets of disinvestment action and there is a "reflex action by the media to brand them racist" says the report.

REAGAN SAYS US WILL WORK FOR CHANGE

PRESIDENT Ronald Reagan says his administration intends to continue working "steadily and quietly" with South Africans opposed to apartheid to help change the system.

In a recent interview the President said he felt this policy was making some progress towards changing the South African political system.

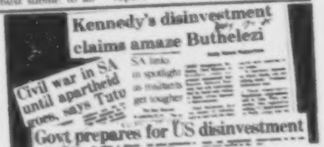
Meanwhile the Washington Times reported the results of a public opinion poll which indicated that most Americans either did not know or did not care about the anti-apartheid demonstrations outside the South African Embassy in Washington.

The Washington Post reported that the dollar figure of US-South African trade last year was 4.5 billion dollars.

Listing South Africa's mineral exports, the article said nearly half of the foreign uranium delivered to the US Department of Energy for enrichment came from South Africa or Namibia.

In South Africa newspaper reports says the Government is preparing for the "economic shock of disinvestment."

In a series of private meetings with businessmen, a senior official of the Foreign Affairs Department has warned them to brace themselves for the blow.


Kennedy's disinvestment claims amaze Buthelezi
SA links in spotlight as militants get tougher
Civil war in SA until apartheid goes, says Tutu
Govt prepares for US disinvestment

Early in February it was reported that New York is to become the first US city to act against the purchase of South African goods and against South African-linked businesses and banks.

A spokesman for the American Committee on Africa said many other cities were poised to follow suit.

The UN Secretary-General, Mr Javier Perez de Cuellar, has also transmitted to the UN Security Council a proposal by the General Assembly that it considers urgently the imposition of mandatory economic sanctions against South Africa.

WHY I MUST SAY NO!

U.S. investment in South Africa - the $2,5 billion question

The prestige and authoritative US finance magazine, Fortune, devoted a supplement to the question of US investment in South Africa in its issue of October 1, 1984. People interviewed include Dr Kenneth Kaunda, President of Zambia, Mrs Lucy Mvubelo, General Secretary of the National Union of Clothing Workers, Mr Harry Oppenheimer, former Chairman of the Anglo American Corporation and Mr David Rockefeller, former Chairman of the Chase Manhattan Bank. Chief M G Buthelezi, Chief Minister of KwaZulu, President of Inkatha and Chairman of the South African Black Alliance was also asked to contribute his thoughts. Some of his major points are printed below and on the following page.

FOR ME the first question which must always be asked in the disinvestment debate is what the people of South Africa themselves say about it.

I have yet to meet a humble worker who does not echo the sentiments of my Soweto audiences. Oppressed as they are they will never support disinvestment. They have not and will not endorse it as one of their strategies for liberation.

How can I give my approval to pressures regardless of the suffering they will entail for my people? I cannot bring myself to tell the poor of this country that I am working for the cessation of foreign investment in South Africa. Investment which means jobs for the unemployed, clothes for the naked and food for the hungry.

We Blacks manage to do the little we can towards our liberation and the welfare of our families BECAUSE of the meagre investment that comes our way.

Investment is, in fact, a strategy FOR liberation. Every foreign investor who has created employment opportunities in South Africa knows that every Monday morning there are hordes of unemployed at their factory gates seeking jobs.

These people need a cash wage so they and their families can survive. Only when there is food in their bellies can they afford to take the time to consider their political horizons.

There are more than 20 million Blacks in South Africa. In KwaZulu millions eke out a living as subsistence farmers, domestic and clerical workers and so on.

The desperate poverty of these people can be seen in the 1980 census figures which reveal that 50 percent of KwaZulu's rural population earned less than $650 a year and 50 percent of urban dwellers less than $1 500 a year.

People starve to death in KwaZulu.

And still the disinvestment question and the more general question of South Africa's isolation in the international community is constantly raised.

South Africa's internal policies are so repugnant to the human conscience that the isolation of the country and the crippling of its economy seems to many to be a moral course of action.

I understand the moral indignation of the world and I am glad for it. However, disinvestment is a wrong strategy, a misguided strategy and will do nothing to aid the struggle for liberation within the country.

It is, in fact tactical madness.

Various voices clamour for disinvestment.

The African National Congress Mission in Exile, having abandoned the internal struggle against apartheid in favour of mounting an armed attack against the Government and working in collaboration with international forces favouring a revolution and the use of violence for political purposes, espouse disinvestment as an essential tactic.

Within the country there are minority groups, there are church groups and there are groups among the intelligentsia who also favour disinvestment.

There are, however, other voices — the voices of the masses, who totally reject the tactic.

When General Alexander Haig visited South Africa I told him that we felt the process of change should be associated with the vitalisation of the free enterprise system and the maximisation of the country's productive capacity.

I also said that we recognise the need, if at all possible to bring about changes in partnership with Western interests.

I felt incumbent to make it clear, and I will reiterate, that the present Government's commitment to racist politics is giving rise to deepening Black anger. As anger deepens so will Black politics become increasingly careless about the economic consequences of Black political action.

If change is not brought about by democratic and non-violent opposition to apartheid (principles of Inkatha) then it will sooner or later be brought about by violent means.

That there will one day be a new dispensation in South Africa there is no doubt.

But what sort of South Africa will we all inherit in which to share power? For unlike the White supporters of the ruling National Party, we in Inkatha are not racists.

It is unfortunate that many of the people who are in the forefront of the disinvestment campaign rely on the ANC for their guidance.

My brothers and sisters in exile are sadly out of touch. They forget that most of us work, live and die within the borders of apartheid South Africa.

I must stress that we cannot afford to adopt the attitudes of theoreticians towards our own suffering.

Those who advocate disinvestment have adopted a strategy born out of pathetic misanalysis.

Many factors have been ignored and on top of this is the fact that South Africa is not as vulnerable as many people think it is.

Consider the following:

- The South African economy has already reached such a level of self-sufficiency that disinvestment would only act as catalyst for greater achievements.
- The country is a nett exporter of food and energy to Africa and elsewhere in the world.
- It is an exporter of a whole range of strategic and other minerals.
- The economy of this country is already integrated with the vested interests of the Western industrial world and with the developing economies of Africa.
- Various British Governments tried to use sanctions to topple Ian Smith's Government of 200 000 White settlers and together with the United Nations failed. It is now known that some of the biggest names in commerce and industry throughout the world assisted in the sanctions busting which kept Rhodesia (as it then was) afloat.

So I must try to hammer home that it is too simplistic to regard any action meant to harm the economy of South Africa as something that will only harm South Africa.

Any harm to the South African economy would reverberate in Africa and throughout many Western industrial countries.

Disinvestment may shake South Africa's economic foundations. It would certainly pulverize the rest of Southern Africa — such is their economic dependence (although often hidden) on Pretoria.

One has to ask whether supporters of disinvestment merely wish to bring the Government to its knees ... or, do they have in mind the destruction of the entire South African economy?

If so, the naivety of their quest is mind boggling.

This raises the question of — given the facts — why some people in the international community are still so determined to see this tactic endorsed by the captains of commerce and industry.

Why are they so persistent to push disinvestment even with the knowledge that we Blacks (whom they purport to be helping) are the ones who will suffer the most?

Already we fail to do more for ourselves because we are caught in the various cycle of poverty, ignorance and disease. Disinvestment would strip us bare.

So I must conclude that those would advocate disinvestment do so in complete disregard of what Black people themselves think.

I have told the United States Ambassador to South Africa, Mr Herman Nickel, that we Blacks are grateful for the concrete help we receive from time to time from the US as opposed to the radical rhetoric which has emanated from some Administrations.

Assessments of the South African situation by Western Governments, as I explained to Mr Nickel, are made up in terms of their own vested interests and they are different from the assessments which Black South Africans themselves make.

When it comes down to brass tacks foreign governments, the United States included, at this stage do not want to take sides in Black politics.

There is for them as yet insufficient clarity about who in Black politics will emerge victorious and what force will ultimately be the force that has to be reckoned with. There is a kind of waiting to see which way the cookie crumbles and there is kind of immoral opportunism at work which does not want to back the wrong horse.

In a country such as ours you cannot have an expanding political vision in shrinking economic circumstances. Ever-increasing poverty is an increase in political radicalism.

We believe the struggle for liberation must be waged by the people of this country and we will continue to reject any suggestion that external forces should move in to rectify our position for us.

Dialogue between America and Black South Africa needs to go far beyond intercourse between radical pressure groups in the US and protest by Black politicians in South Africa.

American national interests and South African national interests are not served by pressure groups which reject Black market-place pragmatism in favour of the magnification of forces of conflict.

"If we cut off investments we would lose jobs in this country and we wouldn't necessarily help Blacks in that country."
Andrew Young, former US Ambassador to the UN.

"If you want a complete transformation of this society, the easiest thing to do is to get everybody packing their bags, taking money out, etc. But of course, the moment that you do that you create economic chaos. And that is a sure guarantee for full-scale, bloody, racial confrontation which would unleash a bloodbath such as we have never seen."
Percy Qoboza, South African journalist and former Neiman Scholar at Harvard University.

"I have spent my life in endeavouring to achieve trade union rights to assure all South African workers the necessary economic advancement and security that would in turn give them the clout and leverage to gain the political rights now denied to Black workers. This clout can be obtained only if South Africa remains economically sound ... are we Blacks to achieve our political rights on empty stomachs?"
Mrs Lucy Mvubelo, General Secretary of the National Union of Clothing Workers.

"People in the US are demanding two totally contradictory things. On the one hand they want to help the Blacks by not investing in South Africa and, on the other, they demand that wages and other conditions be improved. But you cannot achieve improvements in the field of wages and other working conditions if industry is not registering a steady growth. The only way to bring about peaceful change is to allow a modern economy to build up — which cannot exist without the participation of vast numbers of Black people holding down skilled and highly paid jobs."
Harry Oppenheimer, former Chairman of the Anglo American Corporation of South Africa.

UNIONS CALL FOR ACTION BY THE END OF 1985

But do members agree?

THE COUNCIL of Unions of South Africa (CUSA) has stated that it wants federal legislation on disinvestment to be enacted in the US by the end of this year.

The Council, which represents 12 trade unions comprising 249 000 members, issued a statement on disinvestment after its leaders met with Senator Edward Kennedy.

(It is not known whether the executives of any of the major Black trade unions in SA have held general meetings/ballots and put the issue of disinvestment to their membership for a mass and democratic response. Newspaper files do not record any such meetings/ballots having been held.)

The statement said it expected Senator Kennedy to pursue a vigorous campaign of "constructive disengagement" and to ensure that nuclear, computer and defence technology was "not sold or licenced or franchised in South Africa."

CUSA also asked him to use his "personal capital" to divest from companies which did not meet certain criteria.

These include those who:

— "Do not adhere to just and equitable labour practice.
— "Do not endorse that all South Africans should enjoy all the freedoms that United States investors enjoy.
— "Do not commit themselves towards a just and free and undivided South Africa."

CUSA's president, Mr James Mndaweni, said the envisaged disinvestment legislation which Mr Kennedy was expected to achieve should clearly:

— "Stop new investments in South Africa while apartheid still exists.
— "Restrict the sale of Krugerrands.
— "Withdraw all investment which supports the apartheid system.
— "Terminate US involvement in so-called homelands.
— Cease all supplies of whatever nature which assist the apartheid machinery."

Early this year, at a conference in Washington, some Black SA trade union leaders committed themselves to a policy of selective American disinvestment.

In the US for a conference with US unionists, they said they did not believe that US companies in South Africa were a force for good or adhered to the Sullivan Code of fair employment principles.

Mr Longway Kwelemtini, president of the Food and Beverage Workers' Union of SA said foreign companies used the Sullivan Code and a similar code put forward by the European community to justify their presence in the Republic.

Mrs Jane Hlongwane, general secretary of the Steel, Engineering and Allied Workers' Union, added that the Unions' did not take the principles seriously because neither they nor the American unions were involved in monitoring the companies' adherence to them.

She said no American company had encouraged the growth of Black South African trade unionism.

Both the motor company Ford and the mining and manufacturing firm, 3M, were cited by the unionists as not adhering to the principles.

Both are signatories of the Sullivan Code and last year were rated in the highest category by the Arthur B. Little accounting firm which monitors the companies.

In his meeting with Senator Kennedy, Chief Buthelezi said it was good that he had spoken to various labour leaders.

He said labour unions were still "trying to find their feet in a new ball game" from which Africans had been excluded for many years.

Chief Buthelezi added: "... there are people (in Black politics) who dread the back-breaking job of organising people (and) who try to poach membership of some trade unions using them as political cattle who must do their bidding ..."

He went on: "Some functionaries who help in running our trade unions, particularly of other race groups, behave just like Whites behave towards us when they pontificate for members of trade unions without consulting them, just as Whites dictate to us without consulting us.

"Please do listen to what labour leaders say, but bear in mind that Black workers, as Black workers, have not yet called for disinvestment."

"... I have not yet advocated disinvestment in South Africa. I have actually called for increased foreign investment on stringent conditions... but if apartheid has not been dismantled within two years, I will call for punitive economic sanctions whatever the legal consequences of doing so might be..." Bishop Desmond Tutu on the occasion of his enthronement as Bishop of Johannesburg in February.

"Any examination of labour relations in the current economic climate in SA start and end with the unemployment question. The correlation between unemployment and civil unrest in South Africa has been adequately established over the past two decades. It is being reinforced by patterns of more recent unrest which have been concentrated in those areas where retrenchment and lay-offs have been most severe — the East Rand, Vaal Triangle and the Eastern Cape..." Mr Andrew Levy, labour consultant, in an interview with The Star, Johannesburg.

"Loss of American investment would mean South Africa would lose one per cent of a required annual economic growth of about five percent. That would be a serious blow to South Africa because it makes the difference between a barely adequate and an inadequate growth rate... the biggest help in fighting disinvestment is evidence of forward momentum in reform. We would like to think the overwhelming majority of South Africans see change as being in their own interests as well... the job is to prove the disinvestment lobby does not have a monopoly on anti-apartheid sentiment — even conservatives in the US cannot have attachment to them the label 'Soft on Racism, soft on apartheid...' The disinvestment question raises serious constitutional issues in the US such as the Prudent Investor Rule, the Commerce Clause and the Supremacy Clause which leave foreign policy to the Federal Government... Mr Herman W Nickel, US Ambassador to South Africa, in a SABC-TV interview in February.

The State President, Mr PW Botha: "... open discussion to improve communication ..."

BUTHELEZI SLAMS PLAN AS "A TALKING SHOP..."

REACTING to the State President's proposed forum for Blacks, Chief Buthelezi said it was clear that leaders like himself who rejected so-called "independence" had nothing yet to talk about with the Government.

"The forum which the State President talked about looks no more, no less, than a talking shop meant to divert all our attention away from seeking full political rights with Whites, Indians and Coloureds," he said.

"While we accept the principle of give and take in negotiations about our future, there is no way in which we as the African majority can accept being fobbed off with such lousy political crumbs."

Chief Buthelezi said Blacks had extended a hand of co-operation many times and could no longer understand why they alone should always be called upon to co-operate all the time "without any suggestion from us being given even a cursory look by the Government."

He added that it would be "extremely irresponsible" to give the Government the wrong impression that "we can co-operate in our own political suicide by going into things like the so-called forum, which looks like a toothless bulldog or at most a talking shop."

Chief Buthelezi said the time for prescriptions by one race group for "the rest of us" had gone and would never return.

"The sooner this is realised the better the prospects for peaceful change in South Africa," he added.

"We reject the whole idea of splitting up the African people into those who are in the homelands and those who are outside."

PW BOTHA ANNOUNCES NEW BLACK FORUM

AT THE opening of Parliament at the end of January, the State President, Mr PW Botha, acknowledged that there were "certain problems" which led to frustration in Black communities.

He said that from deliberations of the Cabinet Committee it had become clear that "communication and mutual trust" between the population had to be improved if peaceful constitutional development was to be successfully pursued.

Mr Botha went on: "In my personal capacity as the person with the final responsibility for matters affecting the Black communities I have therefore, after consultation with those concerned, decided to supplement the activities of the Special Cabinet Committee by establishing an informal, non-statutory forum in which interest groups and representatives of the government bodies concerned will participate on an ad hoc basis and by invitation."

The forum, he said, would be chaired by the Minister of Constitutional Development and Planning. There would be open discussion on a wide range of constitutional and related matters to "improve communication" between the Government and Black communities and to create a "favourable basis for negotiations aimed at arriving at mutually acceptable development steps in the constitutional field."

In his opening address Mr Botha also made it clear that "... it remains the Government's point of departure that because of the diversity of South African society, it is neither desirable nor practicable to accommodate all communities in the same way."

Chief M G Buthelezi "... we are being fobbed off with lousy political crumbs ..."

Surveys canvass Black opinion

A NUMBER of surveys canvassing urban Black opinion on the issue of disinvestment have shown that an overwhelming majority oppose the strategy.

Internationally recognised sociologist Professor Lawrence Schlemmer, Director of the Centre for Applied Social Studies at the University of Natal, showed in one report that 75 percent of working Blacks were opposed to disinvestment.

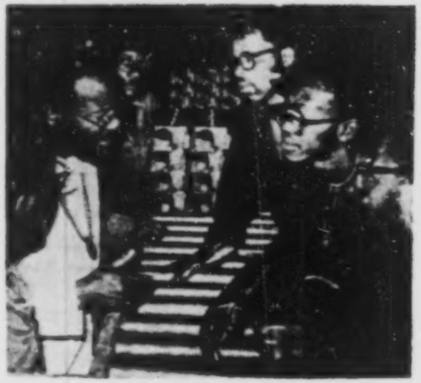
"Rising unemployment will result in increasing unrest"

A Human Sciences Research Council survey of 1 500 Blacks over 18 years of age in the Pretoria-Witwatersrand-Vereeniging area revealed that:

- A substantial 64 percent regarded economic pressure as their biggest problem — including a lack of money and housing as well as unemployment problems. 21 percent felt that apartheid was their most serious problem.
- Over 60 percent said they felt Blacks would suffer most through disinvestment; 14 percent thought Whites would be more affected.
- Just over 56 percent felt Black pupils were wrong to boycott classes; 35.8 percent approved of boycotts.
- About 27 percent believed White Government institutions and leaders were responsible for the boycotts; about 25 percent blamed pupils and their representative councils.

Clarion Call was told that although the Minister of Manpower, Mr Piet du Plessis, puts the unemployment figure in South Africa at 500 000, unofficial estimates put it between 2.75 million and 3 million — and rising.

Concentrated in the major metropolitan centres in South Africa, unemployment is hitting mainly semi-skilled and unskilled Black workers.



Chief M G Buthelezi talking to factory workers ... none have told him they support disinvestment.

It is feared that the rising unemployment figures will result in increasing unrest.

In an interview with The Star in Johannesburg, Mr Loet Douwes Dekker, senior lecturer at the Wits Graduate School of Business Administration, highlighted another problem.

"Most South African employers see labour as a liability and not as an asset," he said.

"As a result, in a recession the first cost factor which managements look at is the wage bill ..."

Professor Nic Wiehahn, head of the UNISA's School of Business Leadership and chairman of the Wiehahn Commission, also told The Star he believes it is time to re-examine the type of free-enterprise system needed for South Africa.

"Most employers see labour as a liability and not as an asset ..."

"Until there is freedom in the economy, unemployment will be one of the negative side-effects of structural restrictions in South Africa."

The lifting of restrictions on labour such as influx control, the Group Areas Act and discriminatory legislative practices would go a long way towards freeing the economy, he added.

Too many workers — too few jobs

The following pictures were taken in the township of Alexandra, north of Johannesburg, early one morning in February. Hundreds of unemployed gather every day at various street corners in the township where it is known that they can be picked up by building site foremen and others seeking casual labour. The procedure is simple. The prospective employer drives up, calls out what he requires and the men scramble into the waiting trucks and cars. Now and again the men might be told what they will be paid for the day. More often than not they are told that they will be given "the going rate" of about R20 or R25 a day — if they are particularly qualified as plasterers, painters, bricklayers and so on. Basic labourers earn less.

'I need one painter, one plasterer, one bricklayer ...'

'Take me I can do it ...'

WHO'S WHO — AT A GLANCE

KwaZulu Government Cabinet

THE Honourable Prince Mangosuthu G. Buthelezi B.A.; LLD (h.c.); Knight Commander of the Star of Africa (Liberia); French National Order of Merit; Chief Minister of KwaZulu, President of Inkatha, Chairman of the South African Black Alliance and Senior Traditional Advisor to his Majesty the King

Dr the Honourable O.D. Dhlomo: B.A., B.A. Hons, B.Ed, M.Ed, D.Ed, U.E.D. Minister of Education and Culture

Dr the Honourable F.T. Mdlalose B.Sc; U.E.D.; M.B. ChB. Minister of Health and Welfare

THE Honourable Mr H.I. Madonsela B.A.; B.Iur; B.Ed. Minister of Finance.

THE Honourable Mr C.J. Mtetwa, Minister of Justice

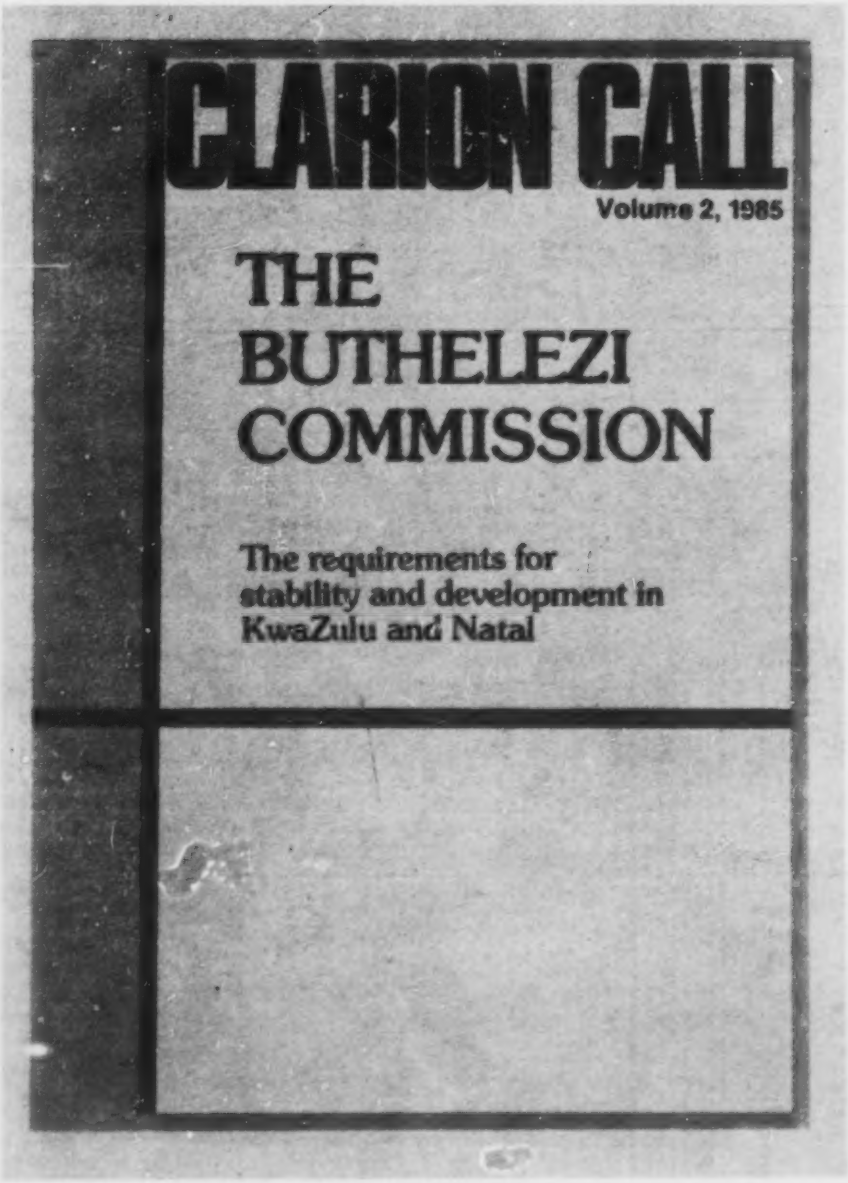
THE Honourable Prince E.C. Dlamini, Minister of Agriculture and Forestry.

Dr the Honourable D.R.B. Madide, B.A.; M.B. Ch.B, Minister of the Interior

THE Honourable Chief S.H. Gumede, Minister of Works.

Departmental Secretaries

Mr E.V. Johns, centre front row, Secretary, Department of the Chief Minister with Mr W.E.N. Wiggil (Interior), Mr H.B. Isherwood (Works), Mr H.M.S. Ferreira (Agriculture and Forestry), Mr E.E. Oltman (Justice), Mr G.V. Zuma (Education and Culture), Col. S.M. Mathe (Police), Mr W. Van den Heever (Finance) and Mr A.P.E. Mkhwanazi (Economic Affairs). Absent Dr D Hackland (Health).



CLARION CALL

Volume 2, 1985

THE
BUTHELEZI
COMMISSION

The requirements for
stability and development in
KwaZulu and Natal

CLARION CALL

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Clarion Call wishes to thank Professor Lawrence Schlemmer for preparing this brief analysis of the Buthelezi Commission. Additional information added to his paper was taken, in part, from the two volume report of the Commission.

It must be stressed that, owing to space, only certain excerpts from the Commission's detailed and comprehensive political and constitutional report have been highlighted, omitting many of the findings relating to economic development, education, social and health services, agriculture and so on.

The Buthelezi Commission, Volume 1 and Volume 2, can be obtained from H & H Publications (Pty) Ltd., PO Box 50024, Musgrave Road, 4062, Durban. Price R30 plus postage or from Mrs S. Griffin, Box 783966, Sandton 2146. Tel: (011) 7833280.

THE BUTHELEZI COMMISSION

It's place in the process of constitutional development in South Africa.

By Professor Lawrence Schlemmer, Director, Centre for Applied Social Sciences, University of Natal. Secretary to the Buthelezi Commission 1980 - 1982.

Black political rights is without doubt the key political issue in South Africa today.

Black politics, irrespective of the group or movement in question, is centred on the issue of citizenship and the franchise.

Without a resolution to this issue no single major political, social or economic problem facing South Africa can be meaningfully addressed — whether it be unrest in the townships, confidence in the economy, the disinvestment campaign or industrial unrest.

The Buthelezi Commission, under the chairmanship of Professor G D L Schreiner, which reported in 1982, stands even today as the major constitutional alternative to government suggestions and proposals which demonstrably carries the support of leading South Africans across lines of party affiliation, colour and creed.

Interest in it has been increasing in recent times and it is appropriate to analyse its findings and implications once again.

The Buthelezi Commission was a Black initiative. One has often heard Black intellectuals and political observers say that Black people need not struggle to find compromises and alternatives to the polarisation of views in South Africa.

As they often put it, the Whites through their refusal to acknowledge Black people as full citizens, are creating the essential problems, and that it is up to Whites, therefore, to formulate alternatives and policies which Blacks may or may not find acceptable.

While this viewpoint is perhaps understandable in view of the frustrations of decades of one-sided White control and administration, they are singularly unhelpful in assisting South Africa to struggle with its enormously complex constitutional problems.

Chief M G Buthelezi and his government obviously do not hold to this view.

The Buthelezi Commission was established as a very substantial and indeed historic gesture of willingness to struggle with Whites, Coloured people and Indians to find a path between all the pitfalls of hostility and antagonism which make the solution to our problems so difficult.

The KwaZulu government took this step after a period in which the critical problems facing the future of Natal and KwaZulu had become painfully apparent.

In his speech to the KwaZulu Legislative Assembly announcing details of the Commission, Chief Buthelezi said: "South Africa stands on the threshold of a new era as the sole remaining White-ruled territory in Africa, with signs of impending internal change ... yet with all the formal initiatives for change occuring within the National Party-dominated political framework.

"Since the time of Union Blacks have had no formal share in the shaping of the constitutional, administrative and economic structures of South African society.

"The absence of formal initiatives by Blacks has left the central political process in South Africa dangerously impotent and helpless to solve its own problems.

"Given this truncation of political vision it is hardly suprising that today South Africa finds itself in a situation of stalled political evolution.

"Inkatha recognises that the present political impasse cannot be circumvented by protest ... the time has come for a formal Black initiative in planning the collective political future ..."

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KwaZulu at present consists of over forty pieces of territory stretching from the Transkei in the south with blocks of land interspersed with the territory of Natal right up to the borders of Swaziland and Mozambique in the north.

Investigations by the Eastern Regional Consolidation Committee of the central Government had shown how enormously difficult and costly it would be to consolidate the dispersed blocks of KwaZulu into the ten major pieces as defined in official government proposals in 1975.

Ten major pieces is understandably hardly a geographic basis for a separate state, and therefore the committee had to consider even more radical consolidation if any geo-political realism was to be introduced as a basis for a coherent KwaZulu of the future.

It was realised that even the 1975 proposals would involve the unproductive expenditure of millions of rands and the resettlement and political alienation of hundreds of thousands of Black people.

The enquiries into a possible consolidation alarmed very prominent business leaders, as a consequence of which the South African sugar industry requested Professor Jan Lombard and a team from the University of Pretoria to consider alternatives to consolidation.

Professor Lombard and his colleagues could not complete their final detailed examination, but what they found was sufficient to move them to say in a preliminary report that a separate and independent dispensation for the territory of KwaZulu was simply not practical. (J.A. du Pisanie, J.A. Lombard, G.C. Olivier and W.B. Vosloo. Alternatives to the Consolidation of KwaZulu: Progress Report. Pretoria: Bureau for Economic Policy and Analysis, University of Pretoria, 1980.)

Chief Buthelezi and his cabinet were aware of the investigation by the team from the University of Pretoria and the draft of the interim report was submitted to Chief Buthelezi for comment.

In discussions which followed between Chief Buthelezi and representatives of the sugar industry it became clear that Black viewpoints and the input of the KwaZulu government and of Inkatha were vital in taking the debate further.

At another level, informal procedures for consultation and a certain degree of joint planning had already been instituted between the KwaZulu government and the Natal Provincial

KwaZulu (dark shading) and its border areas (lighter shading).

Administration.

These included the presence, informally, of members of the KwaZulu cabinet as observers at Natal Executive committee meetings.

The issue of the political and constitutional relationship between the African people of the KwaZulu/Natal region and the Whites and others in Natal had emerged very clearly in debate in the region.

Were the African people to be "consolidated" into a completely separate dispensation, or would the growing interdependence of KwaZulu and Natal be reflected in a different constitutional evolution?

The KwaZulu cabinet decided to take a lead in the debate and in May 1980 the KwaZulu government established the Buthelezi Commission, with Professor Schreiner as its chairman.

The terms and reference of the Commission will be dealt with, in brief, further on. It is important to note now, however, that the Commission was directed to investigate the political, constitutional, economic, educational and administrative future of *both* KwaZulu and Natal *within* the constitutional structure of the Republic of South Africa as a whole.

This brief ensured that the Commission would consider the future of the region within a comprehensive framework, attuned to the more general debate about the constitutional future of South Africa as a whole.

The significance of the Commission, which included over 40 prominent African, White, Coloured and Indian South Africans was underscored by the central government's decision to exclude African's from its own constitutional planning body, the President's Council.

The Commission held its first plenary session in October 1980. It allocated its very wide terms of reference to a number of specialist working groups:

- ● Constitutional and Political.
- ● Economic Development.
- ● Planning and Administration.
- ● Education, and
- ● Social Services and Health.

A Central Working Group, including the Chairman of each Specialist Working Group, was also set up to co-ordinate activities, to hear oral evidence and receive written evidence.

The final report consisted of two volumes to each of which were attached essential appendices.

The two volumes consist of:

Volume 1:
The Commission's Main Report
The Planning and Administration Sub-Committee
The Report on the Attitude Surveys
Volume 2:
The Report of the Political and Constitutional Sub-Committee
The Report of the Economic Development Sub-Committee
The Report of the Education Sub-Committee
The Report of the Social and Health Services Sub-Committee

Chief M G Buthelezi with Prof. G D L Schreiner, chairman of the Buthelezi Commission.

The major findings

Large area of compromise exists between Blacks and Whites.

The Commission had to take the policy of the National Party/South African Government very seriously indeed and consider fully all arguments in favour of a permanent political partition of Natal and KwaZulu.

This was particularly necessary after the governing party itself declined to serve on the Commission.

After exposing itself as fully and as fairly as possible to all factors indicating the desirability of the separation, the Commission nevertheless had to conclude otherwise — and in so doing reached the same broad conclusion as reached by Professor Lombard and his associates.

The Commission's reasons, very broadly, were that:

● There appeared to be negligible support among representative high-level community and business leaders in Natal for separation;

● The growing inequality in material circumstances between KwaZulu and Natal could not be combatted with a divided administrative and political dispensation.

● This conclusion held even after the fullest considerations of the benefits which might accrue to KwaZulu from the new Regional Development policy and whatever benefits could emerge from a "Confederal" link between KwaZulu and South Africa, as a current government policy proposes.

● Separation could only increase the political alienation of Black and White. This the Commission saw as a particular danger given the overwhelming evidence the Commission obtained of growing anger, militance and radicalism among Blacks.

Extensive surveys were undertaken as part of the Commissions work among Blacks, Coloureds, Indians and Whites in the region.

Black opinion was also surveyed on the Witwatersrand.

Among the many issues covered, people interviewed were probed as to the acceptability or otherwise of various political and constitutional options for the region.

The results of the surveys showed that a large area of compromise exists in the views of the different groups regarding a political future for the region.

As would only be expected, Whites are the most resistant to options which include a sharing of power between races in the region.

Even in this group, however, slight

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majorities or near-majorities are prepared accept options which majorities of Blacks, Coloureds and Indians seem to accept.

On the basis of the kind of results presented (all the tables are shown in the Commission's report) the Commission accepted that, even among Whites, an integrated region of Natal/ KwaZulu was an achievable political goal for any political party — excluding only the right-wing opposition to the present governement.

A schedule of "Consensus-Dissent" illustrated this. Among some party supporters, mainly National Party supporting Afrikaners, considerable leadership will be required to sell the policy but the majority agreement among Whites generally could encourage movement among government supporters.

It was not assumed that majority agreement on a political devolution for KwaZulu/Natal would be immediately forthcoming from National Party supporters but the Commission anticipated the possibility of considerable movement with adequate leadership over the few years following its proposals.

Also, attitude profiles within the National Party have now changed since the re-alignment which created the Conservative Party.

The results of the attitude surveys also indicated that, despite much popular wisdom in South Africa suggesting that Black and White political cultures were incompatible, the Black respondents, no matter how they were questioned, revealed basic political values which appeared to be remarkably close to those of Whites.

Considering the distorting effect of great inequality in circumstances, it was surprising that so slight a basic ideological cleavage exists between Blacks and Whites.

The studies revealed, for example, that majorities in all races supported the free market economy, the principles of opposition in politics, the protection of civil liberties within the constraints of maintaining law and order and most importantly the need to protect the legitimate interests of minority ethnic groups.

The results suggested quite strongly that what divides people in South Africa are social structures more than the sentiments and attitudes of ordinary people.

In general, virtually all the survey results supported the Commissions final proposals for a move toward the unification of KwaZulu and Natal, autonomous within but not independent of South Africa, with an internal dispensation based on universal franchise, proportional representation in an all-race legislative assembly, constitutional protection for minorities and a racially-balanced executive or cabinet along consociational lines.

The Commission's report noted that a regional solution in KwaZulu/Natal involving non-racial political co-operation, joint decision-making or a merging of government is acceptable to as many as six to seven out of ten people in the region and is even acceptable to a slight majority of Zulu-speaking people in the Transvaal.

If such a dispensation were coupled with some degree of representation for Black South Africans at the centre, the acceptance in the Transvaal could rise meaningfully.

The report added that a regional accomodation is by no means the ideal solution as Black South Africans see it, even among people in the region itself.

It must be seen as a severe compromise for Black people whose whole political history, virtually, is one of attempts to gain representation in the South African parliament.

Nevertheless, in line with the great openness of Black people to alternative options which will bring progress, a regional dispensation carries effective majority acceptance.

Not all the results of the many surveys have been touched on in this article and readers are referred to the more detailed presentations in the body of the report for a full insight into the attitudes and perceptions of the various population groups.

The high levels of economic and political discontent and significant extent of expressed militancy among Black South Africans in particular indicated the urgency of the situation in South Africa and in the region of KwaZulu/Natal.

The Commission made it clear that popular sentiments appear to be made as to create a climate which will encourage, justify and protect groups aiming at creating instability in the country.

When the report was published it commented: "While a revolutionary situation has not yet emerged in general terms within the populations inside South Africa, developments appear to point in that direction.

"The importance of legitimate internal Black political organisations like Inkatha and others in directing Black South African political sentiments along peaceful and constructive lines cannot be over-emphasised.

"The expectations which the surveys reveal indicate that such organisations have to be seen to be achieving progress in political, constitutional, economic and social affairs if they hope to continue exercising a peaceful and constructive influence.

"This will not be possible unless a political accomodation can be achieved. The minimum expectations of White South Africans, other minorities and Black South Africans in the region, as well as the basic political and economic values in all groups indicate clearly that a mutually acceptable accommodation is possible.

"Political party leaders may not agree with these findings — this would be understandable because party leaders receive feedback from the more active and older members of their constituencies. In conservative parties these and older members are almost always more conservative than the cross-section of passive supporters of the party.

"We are concerned, however, that these surveys reveal a possibility of political progress which majorities of rank-and-file White, Coloured and Indian South Africans can accept as a creative compromise, in order to secure the stability which the future development of this region requires..."

It must also be stressed that the surveys showed quite clearly that there is very little acceptance of the principle of the territorial separation of Black South Africans or of the principle of Black ethnic national areas.

The Black South Africans surveyed in non-homeland areas had no significant emotional or civic identification with KwaZulu, in many cases despite quite extensive social contacts with the territory. Hence Inkatha is not seen as a homeland organisation by its adherents. This is true, even of the fairly substantial proportion of Blacks in the region who are self-consciously Zulu in their ethnic identification.

Despite the rejection of the homeland dispensation, the Buthelezi Commission's findings showed that the leadership in KwaZulu (which has always refused to take so-called "independence") enjoys high legitimacy.

Hence the prospect of representation by the KwaZulu leadership in some more general South African political forum is much more acceptable than "independence" for the area.

The Recommendations

An open 'Consociation' giving Natal and KwaZulu the same degree of autonomy but with both remaining part of S.A.

The Buthelezi Commission report covered not only constitutional matters but also addressed economic, administrative, educational, health and welfare problems.

Only the political recommendations, however, are summarised in this brief paper.

The results of the attitude surveys indicated the urgency of the need for a more adequate political and constitutional dispensation, not only in the region of KwaZulu/Natal but in the country as a whole.

The Commission did not rely only on the attitude survey results. It also exposed itself to a mass of verbal and documentary evidence.

On the basis of this evidence the Commission became aware that no amount of political separation could reduce the need for the fullest co-operation between Natal and KwaZulu at every level of administration.

The clearest example of this has been described by the Chairman, Professor Schreiner, as the problem that cholera, anthrax, rabies, stock-theft, water courses, fires and a host of other phenomena do not observe political boundaries. By the same token, KwaZulu's problem cannot be sealed off.

Quite apart from considerations of social and political justice and equity, therefore, the Commission found itself moved by the irrefutable fact to consider the most sensible ways of getting to grips with the interdependence of Natal and KwaZulu and of all the groups in the whole region.

In doing so the Commission had to consider fully the guiding principle of the government's constitutional policy and planning in South Africa — that of what is referred to as "segmental autonomy" — involving various groups in joint decision-making but as segregated political groups, with separate voting structures, separate residential areas, separate institutions and the like.

The Commission took full account of the traditional policies in this regard, but considered that this approach, rather than protecting group interests, is actually extremely dangerous.

The main reason is that where groups enter into political decision-making as explicit racial groups, any political conflict between groups becomes a racial conflict.

The Commission believed it to be essential to start *blurring* the lines of racial tension rather than emphasising them.

The Commission, after very careful thought and after taking detailed evidence from one of its members, Professor Arend Lijphart, one of the world's leading authorities on constitutional processes in divided societies, decided to recommend that can be called an open "*Consociation*".

This, in the area of Natal/KwaZulu would involve Natal acquiring the same degree of autonomy as KwaZulu but with both remaining part of the Republic.

The Central Government would retain authority over defence, foreign affairs, transport, and major powers of that nature.

The Commission supported decentralisation of authority down to the lowest level of government, but not independence or seccession for the region.

The autonomy would enable the Natal Executive Committee and the KwaZulu Cabinet to combine, with the addition of Coloured and Indian members, into a provisional joint cabinet for the region.

This would be an equilibrium body with little danger of domination of any group by another. It would in effect be a racially balanced "consociational" body, but groups participating would be specified by race as such at the very initial stage.

Thereafter the groups would be allowed to combine and rearrange themselves along the lines of political interests rather than on the basis of race as an official categorisation.

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The responses of Black South Africans, despite their high levels of discontent and the growing militancy which this study reveals, indicate a pervasive moderacy of views. On virtually all policy topics the majority tends to take a point of view which would protect the basic institutions in our society. They are sceptical of idealistic alternatives, they recognise the need for efficiency in the economy and for protecting the skills and initiative which other groups bring into the system.
— The Buthelezi Commission

A cynical White reader of this report may well ask, if these conclusions are to be believed, why there is so much political instability and a pervasive breakdown of democracy in Black-ruled states in Africa. The following points must then be made. Firstly, Black South Africans are not identical in outlook to Africans to the North. Black South Africans for centuries have been exposed to the workings of a much more complex economy and society than anywhere else on this continent.
— The Buthelezi Commission

Constitutional democracy has failed in Africa not primarily because of the political cultures of people, but largely because of the social and economic under-development of these territories. Societies in Africa to the North are too homogeneously poor to produce a variety of different and competing social groups which give society a balance and a strength. The poor in the rest of Africa are generally too poorly organised to constrain and sanction the activities of their elites. Business interests are too poorly developed and often (as expatriate companies) too alienated from the societies to exercise constructive pressures on government.
— The Buthelezi Commission

from previous page

This executive would continue on consociational principles, with major political parties or groupings being represented in balanced proportions, whether on a racial basis or not.

This executive would continue to initiate egislation and policy on the basis of consensus and negotiation with the executive.

This balanced executive would also demarcate boundaries of regions or constituencies within which representatives to a legislative assembly would be created.

These regions would not necessarily be of the same population size. They should, as far as the Commission is concerned, be demarcated on the basis of common sociological characteristics rather than on the basis of race or strict demographic size.

Therefore the racial representation on the legislative assembly would essentially result from a process of decision-making and negotiation on the balanced executive.

The Commission made no provision for and certainly did not see it as automatic that there would be a ratio of representatives following the proportions of the population, although there is little doubt that Blacks would be a majority in the legislative assembly.

In each of the constituencies for the legislative assembly there would be provision for "proportional representation", to avoid the "winner-take-all" principle in our current system.

In addition, on the legislative assembly, there would be a provision for a minority veto, a Bill of Rights and a continuous testing of the constitution by an independent judiciary.

An essential feature of the basis of representation would be that the Group Areas Act would have to be phased out, so as to allow people of similar status and lifestyle to congregate together. In this way the element of racial conflict in the region could gradually be defused.

As already indicated, the Buthelezi Commission was directed to consider not only the political/constitutional future of the region, but also to deliberate on the policies necessary to bring about optimum developments in the spheres of economic welfare, administration, education and social services.

By and large the findings of the subcommittees established to consider these other areas of problems reinforced the findings in the political and constitutional sphere. Only certain highlights can be presented here.

> With every new reform which brings social and economic development to the Black people, the political contrasts between South Africa and the rest of Africa grow. Generally what emerges from the probes on alternative political dispensations is a considerable degree of flexibility and openess to options. There is very little rigid thinking and even less ideologically motivated commitment to particular outcomes. If a proposal appears to expand the degree of participation for Black South Africans, or to enhance their rights and priveleges, it is enthusiastically welcomed.
> — The Buthelezi Commission.

> In board terms the basic political sentiments and beliefs of Black South Africans as regards institutions of government are such as to suggest that they would value and support democratic institutions and ballance moderation in public policy. The basic attitude toward economic processes indicate strong and consistent support for the market economy system as opposed to pure socialist or communal alternatives. There is, however, also considerable emphasis on the extension of welfare in society and hence one may describe the dominant preference of Black South Africans as being a mixed economy.
> — The Buthelezi Commission.

> The results from carefully designed disguised questions testing dispositions towards other races in public life suggest very little inclination to support policies which would discriminate against White, Indian or Coloured South African minorities. While Blacks would not like to see Whites and other minorities retain privileges on an overtly racial basis, there is little sign of an embedded antagonism towards minorities. These conclusions broadly indicate that the public values of rank-and-file Black South Africans are such to make their incorporation into a more open political system for South Africa or the region possible, provided social or economic circumstances do not magnify racial feeling.
> — The Buthelezi Commission

The Commission concluded that neither land redistribution or a consolidation of the territory of KwaZulu would produce optimum development for Black people in the region, even if the extent of the redistribution was very substantial.

This flowed from the fact of the very high density of population in the rural areas of KwaZulu and the very substantial lack of the infra-structure for the stimulation of market-oriented production to replace the subsistence economy which is characteristic of most of the region.

Movement towards existing towns and cities would occur in time naturally resulting in significant depopulation of the rural areas.

The Commission noted that throughout the surveys among Black South Africans it became very clear that the central concern, above all others in political matters, is the right of freedom of access to the labour market and the residential market in the major urban complexes of Natal and the Witwatersrand. Any policy of dispensation which either erodes these rights or does not meaningfully expand them, is rejected by at the very least seven out of ten Black people.

It also emphasised that acculturation to the accepted norms of modern democracies seems to be sufficiently well advanced and consistent to augur well for racially inclusive political institutions in the region. In fact, comparable enquiries in the surveys among White, Indian and Coloured people revealed very considerable overlap in political values between the races.

Where sharp differences did occur they could more often than not be traced to the exclusion of non-Whites from full participation in the common area of South African society.

Most of the reports submitted to the Buthelezi Commission state explicitly or implicitly that for reasons of efficiency the entire eare of KwaZulu/Natal should be governed or administered as a single unit.

In the beginning (of a consociational-type administration) KwaZulu may require special protective measures. However, the Commission noted that this temporary need could not justify that KwaZulu be maintained as a separate governmental entity.

In the surveys consociational proposals were warmly accepted and generally what emerged from the probes on alternative political dispensations was a considerable degree of flexibility and openness to options.

The Buthelezi Commission and the future

THE ONLY SOLUTI
TO THE PRESENT
PROBLEMS IS
PARTICIPATION
BY ALL CITIZENS
IN ONE
PARLIAMENT

Inkatha youth with their message.

At the time of the publication of the Buthelezi Commission report in 1982, the central government, while accepting the value of the research and fact-finding of the Commission, roundly rejected its political recommendations.

This position has changed somewhat in recent times, however.

Today the central government appears to be encouraging joint planning initiatives in the region of KwaZulu and Natal and it fully accepts that economic development must be promoted in the region as a whole.

In fact, the new "growth pole" policy of the government has proposed regions for decentralised economic development which straddle political boundaries and nowhere is this more evident than in the region of KwaZulu/Natal.

In early May, 1984, the Minister of co-operation and Development went further to say that he was prepared to negotiate aspects of the Buthelezi Commission report with Chief Buthelezi.

Again this year, the now Minister of Co-operation, Development and Education, Dr Gerrit Viljoen, said that he too was prepared to examine aspects of the report.

In an interview with Mr Hugh Murray in Leadership magazine, Dr Viljoen said that there were many areas in the Buthelezi Commission which the central government could explore in consultation with the KwaZulu Government.

This was welcomed by the Chief Minister of KwaZulu and President of Inkatha, Chief M G Buthelezi.

Chief Buthelezi said he found the Minister's comments "quite encouraging and statesmanlike".

Dr Viljoen said in the Leadership article that there were several areas in the Buthelezi Commission which merited further study, especially in the economic and social fields.

He said the studies would also be of value in view of the urgent need for further industrial developments in KwaZulu.

What political concessions the Government would be prepared to make, however, remains to be seen.

In one major respect the Buthelezi Commission has received a possible setback.

The Government has announced its intention to dismantle the Provincial Councils as a tier of *representative* government. This will remove the Natal Provincial Administration as an elected 'partner' body to the KwaZulu Government in the region as a whole.

The new provincial dispensation will involve an Administrator in Executive appointed by the central Government reporting to a standing committee of Parliament. This will have to be the body to which the KwaZulu Government would have to relate if the proposals of the Buthelezi Commission are to be pursued.

There are both advantages and disadvantages for KwaZulu in the new arrangement. On one hand it takes responsibility for decision-making in Natal out of the hands of a local group and vests it with the central Parliament and Cabinet.

This may create some powerful impediments to the Buthelezi Commission proposals and slow down the process of their acceptance — since they will be more clearly seen as constituting precedents for other parts of the country.

On the other hand, the advantage is that any negotiation with regard to the Commission's proposals can now occur very directly with the central Government, giving the process of negotiation much greater authority and weight.

The central Government has accepted in principle that Blacks in the common area of the country are entitled to a form of representation at central level.

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It has not, however, given any clear indication of what it envisages as possibilities for Blacks in self-governing areas like KwaZulu which refuses to take independence.

Thus, while some acceptance of the Buthelezi Commission has occured in respect of planning and economic development, and a more broadly sympathetic attitude to its political recommendations is emerging in a very general sense at central Government level, there are considerable impediments in the way of a gradual and constructive implementation of the political findings of the Commission.

In recent statements to the Press, Chief Buthelezi has been quoted as saying that the decision to replace the provincial council systems with a new second-tier government (regional service councils) to be staffed by officials appointed by President P W Botha was "... another blow to the process of bringing about change through negotiation and non-violent means ..."

"What hope is there for the future if the South African Government hurtles into the politics of obscurity, leaping from one expedient to another in desperate attempts to make the new constitution work?" he said.

In another statement he added it was "imperative" that the authorities in Natal and KwaZulu should be closely involved in formulating policy such as the Draft Bill on regional service councils announced by the central Government.

Commenting about the nature of representation on the proposed regional service councils, Chief Buthelezi said:

"If this is in any way weighted to favour one group over the other, it will unavoidably lead to a speedy collapse of the effectiveness of the structure and will, in fact, militate against the willingness of KwaZulu to participate in it ..."

Clearly the task assigned to the Buthelezi Commission — that of promoting a peaceful sharing of power in the region within the context of a wider South Africa — is far from over.

The Buthelezi Commission, however, has provided the evidence which shows that this task is vital.

It has also provided a model of workable power sharing which most responsible people in the region can accept. In these respects it has built the foundations for the task which lies ahead.

The process of establishing a government in KwaZulu Natal

The Buthelezi Commission envisaged that a government for KwaZulu/Natal could be established in four steps.

Each sucessive step represented an increase in the degree of co-operation between areas and peoples. Each step would be used to prepare the next step.

It was vital, the Commission reported, that the entire process should not be prolonged indefinitely — hence it felt it advisable to specify that each step be completed within one year.

In brief the report stated:

1. The first step consists of the closest possible consultation between the existing executive and legislative bodies of Natal and KwaZulu.
2. The second step entails the establishment of a single exeeutive consisting of representatives of the KwaZulu Cabinet and the Natal Provincial Council or, alternatively, an amalgamation of the two executives into a single executive responsible to both of the legislatures. At this step, it is also of vital importance to include one or more elected Asian representatives in the joint executive, and also, but perhaps less urgently, a representative of the smaller minorities.
3. The next step would be the transition to a common multi-cultural executive and legislature for part of the area of KwaZulu/Natal. The most appropriate area for this is the Durban metropolitan area. The DMA government should be set up accordingly to consociational principles. In particular, it should include a power-sharing executive composed of sizeable political or cultural groups.
4. The final step would be to bring the entire area of KwaZulu/Natal under single government. The consociational proposal as set out represents one possibility. An alternative is the Lombard Plan. Probably its main weakness is that it maintains KwaZulu as a separate unit in an arrangement of three units that would also have a joint executive and legislature. Hence it fails to respond to the need for a full integration of KwaZulu/Natal.

In effecting a choice between options, there are definite considerations that need to be stressed, namely:

- A KwaZulu/Natal region should not entail independence from the Republic as such.
- An autonomous KwaZulu/Natal should constitutionally always form part of the broader South African context and therefore, appropriate forms of representation and participation in the central government are to be maintained as vital linkages.
- An autonomous KwaZulu/Natal would require a new dispensation as far as the fiscal inter-relationship between that unit and the central government is concerned.

The Commission stressed in its report that its recommendations represented only a consociational proposal and that many other consociational arrangements were possible. It emphasised:

The drafting of a consociational constitution should not be the function of an outside "expert" but should properly be performed in a negotiating process by the representatives of the people involved.

The only firm general recommendations of the Commission were that these negotiations be guided by the principles of power-sharing, group autonomy, proportionality and minority veto.

	Hanf 1977 Tvl/Natal	Quail Commission Tvl 1979	Buthelezi Commission 1981 Tvl/Natal	
	%	%	%	%
"Life in general"				
"Very happy"/"Just happy"	22	10	6	8
"Unhappy"/"Angry and impatient	57	72	79	78

Trendline results obtained from a scale of socio-political satisfaction/dissatisfaction, standardised by Theordor Hanf of the Arnold Bergstraesser Institute in West Germany, and applied to the Buthelezi Commission study

Black South Africans — what they feel

The Buthelezi Commission revealed significant evidence of an increase in expressed political discontent and anger — which is now present among between seven and eight out of ten Black South Africans.

Actual militancy and an attitude of confrontation appears in between three and four out of ten Black South Africans.

In a section entitled "Political consciousness among Black South Africans," the Commission reported on detailed attitude surveys which were carried out.

The report indicated that most Black South Africans in all the regions surveyed expected moves towards equality with Whites as opposed simply to improvement in their circumstances.

Trendline results obtained from a scale of socio-political satisfaction/dissatisfaction, standardised by Theordor Hanf, et al of the Arnold Bergstraesser Institute in West Germany, applied in the Buthelezi Commission study, provided the noteworthy comparisons in the table above.

A view expressed among 45 to 55 percent of people across groups is that African National Congress (ANC) insurgents would receive sympathy and co-operation from *most or very many* Black South Africans: a view which extends to rural areas of KwaZulu.

In addition the overwhelming majority of Black respondents spontaneously predicted violence or adult social unrest on a large scale if meaningful policy reform did not occur in the near future.

Seven out of ten respondent, for example, predicted mass strikes if people were called upon to act by a credible leader.

Chief M G Buthelezi and Inkatha received clear majority support in all regions of Natal and KwaZulu and also have a substantial degree of support on the Witwatersrand.

The report went on:

There are four interconnected but nevertheless distinctive types of *dissident* consciousness among Black South Africans surveyed. Firstly, as indicated, there are groups which are ideologically conservative, relatively apolitical, but which have high levels of discontent with material circumstances, amenities and opportunities.

Secondly, there is a large formation of political consciousness which involves more than a sense of discontent or deprivation but which is charactersed by a sense of relative deprivation.

A much sharper political consciousness is present among these people.

They want at least equality of opportunity and participation in decisions affecting their lives. They are not necessarily radical or militant in outlook, however. A typical non-youthful Inkatha supporter would approximate to this type of consciousness. This consciousness is also coloured by African Nationalism and a concern with Black solidarity.

A third type of consciousness is tending towards an urban lower-middle and middle-class radicalism. This type of consciousness is not as wide-spread as the second type identified but nevertheless predominant among better-educated younger adults on the Witwatersrand and substantial among the groups in Natal and KwaZulu.

It involves a strong verbal allegiance to both the ideal of Black consciousness and the aims of the ANC in exile.

There is among this group a questioning of South Africa's institutions with quite a considerable flavour of socialism or African communalism. This group tends to have fairly high lifestyle aspirations and could not be called genuinely proletarian in outlook.

A forth broad type is what one might describe as militant. It is probably among this group that one would find the most serious commitment to the current strategies of the ANC in exile.

This type is not necessarily associated with high education: in fact considerable hard core militancy is found

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among some semi-skilled and skilled manual workers, and among some rural subsistence people.

This consciousness is also not necessarily radical in ideological content: indeed even some people with a strong Zulu ethnic consciousness are militant. Militancy is also present among some younger or highly discontented Inkatha supporters.

The relative size of these types of consciousness is very difficult to estimate. Judging broadly from the Commission's results one might say that the second type is the largest in terms of its spread, followed by the first and then by the fourth and third.

Together all four types of consciousness, with variations and overlap, would encompass some 90 percent or more of the Black South Africans in the regions surveyed.

As we have already estimated, the militant category, including the more militant radicals of the third category, probably account for between three and four out of ten Black South Africans in Natal, KwaZulu and the Witwatersrand.

Results indicate that the second and largest category, although politically conscious and with strong feelings of relative deprivation, is moderate in terms of acceptance of policy alternatives. The militant and some of the radical types is less flexible in outlook.

Embedded hostility to Whites is present only among some of the militants and radicals, but is not a feature of the first two groups identified.

From this viewpoint it follows that not all the people who say that they support the ANC are likely to be militants. Some will support the ANC on the basis of the older sentiments of African Nationalism, some because it has become fashionable to support "liberation movements" after Mr Mugabe's ascendancy in Zimbabwe, some because the ANC currently symbolises a radical rejection of the "system" and some because there is, for them, a vacuum of leadership inside the country.

One cannot assume, therefore, that majorities of Blacks have a revolutionary consciousness. A militant and committed revolutionary consciousness with *intentions to act*, as it were, is probably still a minority phenomenon, found among the militant group we have described and among a small number of the better-educated urban radicals.

Even if the group with "intentions to act" is no more than five to ten percent of the young adults, however, it constitutes a disturbingly large number of people.

There is a widespread expectation of violence and a sense of its inevitably as well as considerable sympathy or verbal support for insurgency for a variety of reasons.

These sentiments can have two important effects. Firstly, they create a climate in which insurgency can occur with approval which reinforces the motivation of the insurgent and in this shelter the insurgent may also expect protection and shelter.

Secondly, this consciousness undermines the credibility of internal leadership, which, if internal leadership becomes discouraged, leads to a vicious cycle of an ever-widening political vacuum within the country.

This coupled with the effects of separate development in "removing" internal Black leadership from the common arena of South African politics, could come to be seen as the only political instruments of the Black South African.

There is a clear need for political initiatives which will counteract this trend by building legitamacy for open, internal Black politics in South Africa and in the region.

The comments of the types of consciousness above also imply that there is to some extent a split between economic consciousness (type 1) and political consciousness (types 2,3,4). It stands to reason that politicisation is likely to spread, not decrease, and if the low-level economically deprived Black people become politicised a very significant deepening of the potential instability could take place.

Others fear for the future of S.A.

Whites, Coloureds and Indians acknowledge the need for reform

Less than one-third of Indian South Africans and less than one-quarter of White and Coloured South Africans claim to be confident about the future of South Africa.

The result's of the Commission's surveys among White, Indian and Coloured South Africans showed that the greatest degree of pessimism or anxiety is found among Whites who support parliamentary opposition parties — both to the right and the left of the ruling National Party.

In brief the Commission reported:

Supporters of the National Party appear to have an unusual degree of complacency about the future, which is perhaps partly because of faith in the policies of the governing party, but partly because of other reasons.

The view expressed by Heribert Adam in the political report of the Commission — that White South Africans are too convinced of their superiority over Blacks to be fearful of Black reactions in the future — may be particularly relevant to the supporters of the governing party.

Substantial proportions of each group, however, see the future involving instability and disturbances in race relations. This, where present, is expected as a consequence of the present dispensation for different races or the state of race relations in South Africa today.

In response to these perceptions, very large majorities of Whites and virtually all Indian and Coloured South Africans see the need for reform in the socio-economic conditions for Black South Africans.

Substantially fewer than half of the Whites and less among Indian and Coloured South Africans believed that the present situation of the social and political separation of KwaZulu and Natal could last indefinitely. Among all minorities there is a very high recognition of the fundamental interdependence of all groups in the region.

Of particular importance was the finding that majorities among White businessmen, Progressive Federal Party and New Republic Party supporters, politically conscious and upper-middle status English-speakers endorse the item (in the surveys) that Chief Buthelezi should share in the government of the Province of Natal.

Generally Chief Buthelezi's significance as a political figure and his support among Black people in the region was well recognised.

Whites evasive and defensive

There is great inconsistency and internal contradiction in the pattern of attitudes of White South Africans as regards the policy of separate development.

In surveys studying attitudes to the separation of races in the region and to separate development, the Buthelezi Commission reported a pattern which appeared to be that political separation of the races appealed very strongly to many Whites at an emotional level.

The report said it was essentially an "evasive, defensive reaction" which took little account of the practical implications.

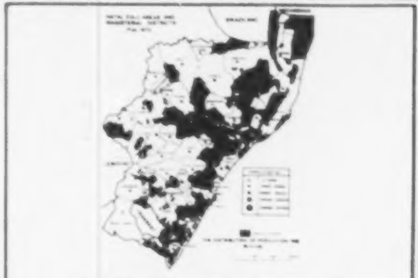
Thus when these Whites were faced with questions about the implications of separate development, there was very little consistent adherence to the policy as formulated and rationalised by political leaders.

While substantial proportions of Whites valued the racial segregation which separate development entailed, the same groupings of people were more often than not least likely to indicate a willingness to grant concessions to a homeland which would allow it to attain minimum viability as a state on its own.

The consolidation of KwaZulu as a geographical entity, involving territorial concessions, was rejected, very substantially, by White South Africans in the region.

Clear majorities in all the minority groups (Whites, Indians and Coloureds) considered it likely that independent homelands would become hostile areas within South Africa and that forces in an independent KwaZulu would destabilise the region.

The Commission reported that given the majority view that the races in the region are greatly interdependent and the fact that KwaZulu and Natal are in close juxtaposition, it was understandable that people could not see problems being sealed off in an independent KwaZulu.



KwaZulu/Natal distribution of Black population — 1980 census.

Population distribution in the region

Census figures underestimate Black numbers

The population in the region KwaZulu/Natal, according to data obtained by the Buthelezi Commission, is approximately 20 percent of the total population of the Republic of South Africa.

The official figures from the 1980 census give a total population as 5 722 221, of which 3 187 987 are resident in KwaZulu. This latter population, with the exception of a few thousand Black South Africans, is predominantly Zulu.

In the area of Natal the 1980 census figures record 1 240 699 Black South Africans, 646 907 Indian South Africans, 557 044 White South Africans and 87 753 Coloured South Africans together with a further 1 841 persons classified as "other".

The Commission noted that it is highly probable that the 1980 census figures represent a considerable underestimate of the number of Black South Africans in the area.

It added that in 1978, population estimates for the region totalled six million and the Black South African population in Natal was estimated at two million.

For example, although the 1980 census figure for Umlazi was 150 670, the Port Natal Administration Board officials make an estimate of between 220 and 250 thousand and the KwaZulu Development Corporation works on an estimate of 300 000 for the same area.

The Commission anticipated that the underestimate was perhaps greatest for those population groups where involvement in the census was avoided through misunderstanding and where there were problems of legality of residence which involved concealment.

Despite the difficulties associated with such an estimate, it is thought that there are probably not less than an extra 400 000 people in the region.

The Natal population, according to the census, is 49,1 percent Black South Africans, 25,5 percent Indian South Africans, 22,0 percent White South Africans and 3,4 percent Coloured South Africans. It is probable that even in Natal the Black South African population is an absolute majority.

The growth rates of the population groups in the area differ significantly. In the ten years between the censuses of 1970 and 1980 the Black South African population increased by 1,182 million (35 percent), the Indian group by 128 000 (24 percent), the White group by 106 000 (24 percent) and the Coloured group by 15 000 (20 percent).

Prayers for peace and unity

Call for Christians to act now

Too few people appreciated just how difficult it was to retain a sense of Christian balance in Black politics in South Africa, Chief M G Buthelezi told guests at the recent 12th prayer breakfast of the KwaZulu Legislative Assembly held in Durban.

"There is around me vast suffering and it is among a people who are given so little hope that their future — and worst still the future of their children — will be improved...

"There are Black South Africans who do not experience the country's churches bringing them the protective arm of the Lord, but only experience the brutality of the police enforcing influx control laws and pass laws..."

Chief Buthelezi said he believed that the present constitution of South Africa was no more than cries of fear by those who had too little faith to turn the other cheek and go just that extra mile which would make so much difference.

Distinguished guests from throughout the country attended the breakfast. The message was read by Archbishop Stephen Naidoo, Catholic Archbishop and Metropolitan of Cape Town. Ministers representing many religions were present.

Chief Buthelezi said that every time he arrived at the Prayer Breakfast he was yet again reminded of the inadequacies of South Africa's Christian life, of his own inadequacies in terms of the Christian faith and the extent to which the Church was only now beginning to grapple with the definition of responsibility in apartheid society.

"At present our country looks like a country of lost opportunities merely because up to now we have lacked the courage to demonstrate God's Kingdom here on South African soil," he added.

"I offer as my central thought in this address that were it not for Christianity we in this country would have long since torn the very fabric of our society apart and set upon each other in violent confrontations of the kind which are catastrophic.

"I believe that in terms of the rawness of human nature, in terms of man's mental make-up, Black South Africa would long since have exploded were it not for the guiding hand of God.

"I offer as my second thought that God's love is both reconciliatory and also at times judgemental. Prominent theologians have seen God's judgement in action in times of war and revolution — the wrath of God, I believe, would be terrible to behold in South Africa if we continue to presume on His patience..."

Chief Buthelezi said that as a Christian he was not a racist and he was not a racist when he said that White South Africa had a particular responsibility to play.

"White South Africans scoff at the anti-South African resolutions passed at the Organisation of African Unity or at the United Nations and they scoff at the resolutions of the Security Council — little knowing how Black South Africans are turning more and more to scoff at the pious utterances of White Christians who have so much, share so little and dare even less to risk what they have got in the fight to implement the spirit of our Lord and to execute His will here on earth."

Chief Buthelezi said that for most Black Christians, when they prayed "Give us this day our daily bread", they meant it literally.

Christian definitions of the evils of South Africa should also contain in them urgently needed remedies.

Explaining this Chief Buthelezi said: "If a man has fallen by the wayside and a traveller passes and defines the man's position as a man who has fallen by the wayside, he is not a good Samaritan.

"If on the other hand a man passing someone who has fallen by the wayside defines his problem as someone needing a helping hand there and then, his is the definition of a good Samaritan.

"We can define the evils of apartheid in such a way that we blame racism...

"But until such time as we define the evils of apartheid that we blame ordinary people living under it and supporting it and benefitting from it, our definition is not the definition which the parable of the good Samaritan teaches us to have..."

He went on to say that he and his colleagues in Inkatha and the KwaZulu Legislative Assembly carried a heavy load in trying to strive to achieve those things that Christendom decreed were worth achieving.

"As I struggle to avoid the escalation of violence, as I struggle to bring about change through peaceful means, as I strive to further the politics of negotiation, I am intensely aware that there will be victory in none of these strivings unless God's hand is here in South Africa to guide the Government, our captains of industry and the ordinary public to lend a hand, to love their neighbours and to love them as a good Samaritan should love them."

He said he believed that one could possibly say with truth that there were in churches in South Africa, preachers and few few prophets.

There were teachers but there were none to lead the people out of the wilderness of race hatred. He feared that there were no prophets because the people did not deserve them.

"I fear sometimes that there are too few who attempt to gather together the Christian offerings that have been made.

"There are too few who see the need to gather together decency wherever it exists and there are too few who demand that that which has already been done by Christians, and that which is already established as decent, be enshrined in our institutions, in our law and in our constitution.

"I believe that the present constitution is a barrier against Christian wisdom ... that reforms so often talked about these days are no more than cries of fear..."

Christ, he concluded, was a great reconciler and in South Africa there was a unique opportunity for His reconciliation to bridge divisions.

Chief Mangosuthu Buthelezi greeting the Archbishop of Cape Town, the Most Rev. Stephen Naidoo, and the Most Rev. Dennis Hurley, Archbishop of Durban, to the Durban prayer breakfast.

Frank talk at KwaZulu's day of prayer for Black South Africa

The open wound of Black disunity

Chief M G Buthelezi

Mrs Winnie Mandela

On KwaZulu's Day of Prayer for Black South Africa, held in mid-May, hopes were expressed for the "African dream" that the country would become a race free, open democracy in which there would be equality for all.

At a moving function in Ulundi, Chief M G Buthelezi, pursuing a central theme of Black unity, said in his address that never before in the history of South Africa had there been such an urgent need for Africans to take stock and put an end to Black/Black confrontations.

"Never before have so many Blacks been involved in the internecine Black/Black strife in which people degenerate into the kind of animal thing that stone people to death, that hack people to death, that burn people alive, that plunder, rob and loot," he said.

"Never before has there been such an urgent need for Africans to put their political house in order and to realise once and for all that Black unity is an absolute prerequisite for the abolition of racism in our midst ... the open wound of Black disunity must be closed forever."

The violence that was daily erupting on the streets of Black townships throughout the country and the bitter hatred which was evident, had fostered a driving force of criminal vandalism, he said.

It was time this ceased.

It was time Blacks used the wisdom of their heritage.

"We here at Ulundi are aware of the evils of racism," said Chief Buthelezi.

"It is here on the very soil that we are building the town of Ulundi where the colonial might of Great Britain finally employed its vast technological superiority in the machinery of war to defeat the Zulu people.

"It was here at Ulundi that Africans experienced the only fully fledged war that was waged against Black South Africa and it was here that the full might of the British arms marched into to defeat us in order to revenge the terrible defeat inflicted on them at the Battle of "Isandlwana."

Time after time since then Blacks in KwaZulu had fought back and been defeated, their Kings had been banished, and their land carved up by the Whites.

But it was in KwaZulu still that Blacks began to spearhead their role in a new South Africa.

It was six years after the Zulu Rebellion of 1906 that Dr Pixley ka Isaka Seme, a son-in-law of King Dinuzulu (Chief Buthelezi's maternal grandfather), had founded the now banned African National Congress with others.

Inkatha (founded by Chief Buthelezi 10 years ago) was structured in the very ideals in which Dr Seme, Dr Dube, Rev Makgato, Rev Calata, Mr Selope-Teme and others founded the ANC.

Chief Buthelezi said the ANC was founded in 1912 to create Black unity and today that need for Black unity was in the hearts and minds of people. Unity did not have to be created — the causes of disunity had to be eliminated.

"This is why I am so appalled at the Black/Black conflicts taking place today," he said.

"Wherever I go I find ordinary people longing to come together in unity. This longing for unity must be translated into united action, and that is why democracy is so important to me.

"It is why only when you give ordinary people the democratic machinery with which to express their aspirations — and to determine aims and objectives for their leaders — that we can begin talking with one voice, acting as one people.

"At mass meetings I have held, people have flocked to me to plead with me to try to banish Black/Black hostility from their midst.

"Ordinary people yearn to work with each other and the fact of the matter is that Inkatha is not a divisive force, as is claimed by some for their own ends. There are people who work day and night to spread this infamous lie across the world.

"The fact that the United Democratic Front (UDF) and AZAPO are now indulging in butchering each other is kept quiet by these same people. There is now a great mute silence from certain quarters about the horrors of Black/Black violence.

"It is now that the authors of disunity and Black/Black strife are becoming visible.

"We strive for unity. It is others who destroy unity."

Chief Buthelezi added that the UDF and AZAPO were committing "atrocities" against Inkatha as well as against each other.

"It is they who are denying ordinary people the right of free political expression," he added.

"It is they who march on Inkatha meetings to do what the machinery of oppression has done to Black South Africa for so many decades — destroy the right of the people to associate politically and to pursue aims and objective of their choice."

These destructive forces would "burn out". Inkatha was the longest surviving Black political grouping in the country. Inkatha had internal unity and solidarity which other organisations lacked.

Chief Buthelezi said Inkatha had "little hope" that Nobel Peace Prize recipient, Bishop Desmond Tutu, would work effectively for reconciliation between Black and Black.

"We do not have to read about Bishop Tutu's actions or to be told about them," he added. "We experience them first hand. We experience denigration which he has hurled at us so often from public platforms both here and abroad.

"And yet it was Inkatha which responded to his call for Black unity and formed a delegation to meet him and other clerics recently in Soweto. This more than anything else is surely proof of our commitment to unity ..."

Inkatha had never claimed to be the only and sole representative of the people of South Africa. Inkatha knew that the struggle for liberation had to be waged across a broad front and that no organisation, and no group, and no one set of leaders could orchestrate the totality of the struggle.

He then said that he felt he had to pause to make a point regarding Inkatha and the actions of Mrs Winnie Mandela, wife of the imprisoned ANC leader Nelson Mandela.

"We have all been witness to the insults hurled at Inkatha ... that it is a tribal organisation pursuing tribal politics in what in swear words is called a Bantustan. I as President of Inkatha am painted as a Zulu traitor pursuing tribal aims and objectives for self-glorification.

"Take the words of Mrs Winnie Mandela. In a nationally broadcast telephone interview in Canada she said that I was: 'A man who benefits from apartheid, a man who works within the framework of the apartheid regime, a man who is part of Pretoria, cannot do otherwise than promote what is promoted by Pretoria ...'"

Chief Buthelezi said he had often wondered since he had heard those words why the wife of "a great son of Africa" would speak in this way.

He believed that perhaps she had ceased being an African in the true sense of the word.

In another interview which Mrs Mandela had given, published in "Index on Censorship" last year, she had said about the Black people of Brandfort:

"They have been emptied of all their culture ... it is nothing to talk of incest here, about aggressive sons who rape their mothers ... The culture that made us, and the culture that alone can save us is not ours anymore ..."

Chief Buthelezi said he believed the key to Mrs Mandela's "political destitution and her impoverished view of South Africa" was her statement that "... the culture that made us and the culture that alone can save us is not

continued overleaf

> "Those who oppose Inkatha have the right to do so democratically. Despite what is said, there is no political organisation in South Africa more tolerant of other opinions than Inkatha. But however tolerant we are of others, and however committed we are to democracy, we will defend our rights to the very last to pursue that which our own conscience dictates we should pursue. Inkatha's anger is a deep anger, and its commitment is a deep commitment and any who try to stampede us out of the role we are playing will find we have a resilience and a strength they never dreamed of ..." — **Chief M G Buthelezi, Ulundi, May 12, 1985.**

> "No armed struggle can be waged successfully unless Inkatha is drawn into it. No non-violent tactics will succeed unless we in Inkatha are part of those tactics. There will be no politics of negotiation without us being involved. We are an irradicable presence in the struggle for liberation, and it is from this position of strength that we extend the hand of friendship to all, and warn all to think very clearly before they employ brutality against us. We do not know what heights Black anger will rise to. But this we do know. Whatever course history takes, and whatever direction the struggle takes, we in Inkatha will be there in the thick of things." — **Chief M G Buthelezi, Chief Minister of KwaZulu (six million Zulus), President of Inkatha (one [illegible] paid-up members, 2050 branches throughout South Africa), chairman of the South African Black Alliance.**

ours anymore ..."

He stressed: "It is culture that distinguishes man from beast; it is culture that turns us into people with human qualities created by God. It is cultural integrity and cultural values which make us walk tall as human beings and relate to others.

"Culture cements human beings [illegible] achievement or natured [illegible] higher grass than [illegible] Culture is not an [illegible] which divides one group [illegible]

"That is Nationalist Party propaganda; that is the evil belief on which apartheid rests.

"In our own culture here in this part of South Africa, the spirit of Ubunto-Botho is an all-pervading one which thrills a Zulu's heart with joy when he or she meets a cultured Xhosa, a cultured Venda or a cultured Tswana. African culture spreads across this country the fabric of unity we should be pursuing as Blacks.

"If Mrs Winnie Mandela was a true Black; if she was an African, she would not despise the people around her like she despises me.

"I have never met such an African defeatist attitude before as I have met in Mrs Mandela when she said in the same interview: 'We are left with nothing here because the culture that made us and the culture that alone can save us in not ours anymore ...'

"It is those who have abandoned their Blackness and who have abandoned their African stature that crawl in the gutters of politics," he emphasised.

"Those who work to destroy unity are an alien evil force among us ..."

He said that those who destroyed Black unity were known by their deeds. Those who despised Black unity encouraged children to go on rampages like wanton animals to loot and stone and burn people to death.

It was these same people who lead people into frenzies which resulted in people being barricaded in their burning homes and roasted alive.

People were encouraged to gather together to stone their fellow Blacks and to hack them to pieces with cane knives and choppers.

"And when they do so in the name of the struggle for liberation, and when they are lauded as being a new breed of South Africans with iron in their souls and when they are presented as an advance guard of the African National Congress' Mission in Exile, the pain in my being becomes unbearable," Chief Buthelezi concluded.

Schools survey shows influence of Inkatha

The influence of Inkatha in Natal/KwaZulu schools was largely responsible for the region being unaffected by the school boycotts which swept other parts of the country in 1984.

This was disclosed in an interview with a group of "typical" senior Black pupils in Natal high schools.

The interview was conducted by Professor Lawrence Schlemmer, head of the Centre for Applied Society Sciences at the University of Natal and researcher Monica Bott. It was reported in a Indicator SA Quarterly Report.

the United Democratic Front and Inkatha, the group of pupils interviewed opted to remain neutral in spite of approaches from both sides.

The Indicator report, published in The Natal Mercury and other newspapers, makes it clear that the group interviewed were part of a wide spectrum of opinion and did not represent all pupils' viewpoints.

The group had a low opinion of activists who wanted to mobilise and "use students", objected to teachers trying to influence pupils politically and emphasised keeping politics strictly from other fields such as religion and history.

Youth at an Inkatha rally in Soweto. Supporters of other organisations try to claim Inkatha has little support on the Reef. At this rally 30 000 turned out to hear Chief Buthelezi and packed the Jabulani stadium. This figure of 30 000 was taken from a South African Press Association (SAPA) report. A short while later, less than 10 000 United Democratic Front (UDF) supporters arrived at the same stadium to attend a UDF "Celebration" rally and hear Bishop Desmond Tutu, Dr Allan Boesak, Ms Zinzi Mandela and others. These facts of the differences in open, public support between the two organisations did not, suprisingly, receive widespread publicity.

The report revealed that dissatisfaction with African education and social conditions, which were a major factor in the educational unrest, were as present in Natal as in other parts of the country.

But the important ingredient of mobilisation and organisation, seen in official circles as "agitation", was in Natal counteracted "by the pervasive presence of another well-mobilised force, Inkatha, an organisation which has always opposed community boycotts as futile and injurious to the African community."

"In Natal/KwaZulu a different balance of political groups, especially

Boycotts and violence were rejected and the pupils felt there was little to gain by taking part in them.

The authors said this was a category of moderate, pragmatic students which could "probably survive in the more evenly balanced political arena of Natal/KwaZulu but which is argued or coerced into submission in other parts of the country."

The pupils were, nevertheless, acutely aware of the "structured disabilities of African pupils" and sympathised with pupils in other parts of the country.

34 busloads of anti-disinvestment protesters head into plush Durban suburb

Show of strength as workers converge on diplomat's home

About 2 000 workers and Inkatha supporters converged on the stately home of the US Consul-General in Durban recently to give him part of a 10 000-signature protest against US disinvestment in South Africa.

They arrived in 34 buses and cars — singing and carrying placards — from throughout Natal and KwaZulu.

They were led by Mr Wonnington Sabelo, a member of the central committee of Inkatha.

The Consul-General, Mr Harry Geisel, said the protest was "very impressive" and showed the seriousness of the situation.

"If people are to lose their jobs we have an obligation to think very carefully before we do anything," he said. "We are talking about the lives of very poor people."

The demonstration was widely reported in the Press and on television.

The demonstrators arrived in Durban North's "millionaire row", Monteith Place, carrying placards that read: "We want jobs for subsistence." "When did the masses call for disinvestment?" "Jobs are not weapons." "We can speak for ourselves." "Uproot the international sell-outs." "The clergy are not the workers nor political leaders." (a reference to Bishop Desmond Tutu and his pronouncements on disinvestment) and "No! to disinvestment."

Others stated: "Away with colonial arrogance" and "The struggle is ours. We have a right to wage it ourselves."

The protesters marched in front of the Consul-General's house and were then ushered into the grounds where they sang freedom songs and raised clenched fists while advocating their stand against disinvestment.

The protesters presented some of the signatures, as the complete list was too cumbersome.

While handing over the petition, Mr Sabelo asked Mr Geisel to send it to the US President Ronald Reagan with a plea to encourage Americans to keep investing in South Africa and in so doing create job opportunities.

"We want jobs, help us to get them. Disinvestment will kill us — to hell with disinvestment," said Mr Sabelo.

Mr Geisel replied that he was, in fact, leaving that day for Cape Town where he would discuss the matter with US Ambassador Mr Herman Nickel.

"You can be sure that we will do all we can to help. I will never forget this day. All the American people want is what is best for all South African people."

Mr Sabelo, in reply to a question from the Press people present, said Bishop Desmond Tutu, who was known to have urged disinvestment abroad, did not speak on behalf of millions of Black workers.

The scene at the residence of the US Consul-General. Senator Edward Kennedy, after his much publicised trip to South Africa, has been reported as saying in the US: "Only Whites in South Africa oppose disinvestment..."

Mr Harry Geisel, United States Consul-General in Durban, stands in the garden of his Durban North home where 34 busloads of Inkatha supporters gathered to protest against US disinvestment in South Africa.

Anti-disinvestment petition to the US Government

"No mass meeting of Black South Africans has ever approved of disinvestment as a strategy against apartheid..."

"No democratically elected Black leader in a membership based organisation has ever been given the mandate to accept disinvestment as a viable option..."

"We petition President Reagan, the Senators of the United States of America and its Congressmen to reject all pressures exerted on them to express abhorrence of apartheid through disinvestment in South Africa..."

The following is the text of the petition delivered by workers and Inkatha supporters to the US Government:

We as leaders elected to positions of authority in Inkatha, have a mandate to speak on behalf of Black South Africa.

This is evident because:

1. Inkatha is the largest Black political organisation ever to have emerged in the history of South Africa and has a paid up membership of nearly one million.
2. Inkatha's leaders are elected to office by its Annual General Conference which is attended by members chosen at local Branch and Regional levels.
3. Inkatha leaders are not only elected by the Annual General Conference, but they are held accountable to it for the way they pursue the aims and objectives set by the conference.
4. The vast majority of Inkatha's members are workers and peasants and it is representative of Blacks in urban areas as it is representative of Blacks in rural areas.
5. Inkatha's aims and objectives and the tactics and strategies it pursues are determined by democratic procedure which enable ordinary members to direct the affairs of Inkatha.

We are mandated to tell Western industrial nations that Black South Africans do not support disinvestment as a strategy which will help them in the struggle for liberation which they wage as Blacks here in this country.

This mandate has been repeatedly given to us at:

1. Every Annual General Conference where resolutions rejecting disinvestment as a strategy are passed unanimously after the question is re-opened for debate every year.
2. Central Committee debates and branch and regional debates which take placein the process of giving practical political effect to the expressed wishes of the Conference.
3. Mass open public meetings which draw crowds of tens of thousands who acclaim the President of Inkatha and other leaders of Inkatha as they inform the Black public of Inkatha's intention to ask for increased investment in this country.

Our stand opposing disinvestment has mass support and we challenge any Black leader who disputes this fact to share a platform with us in Soweto, the country's industrial heartland, to test public opinion.

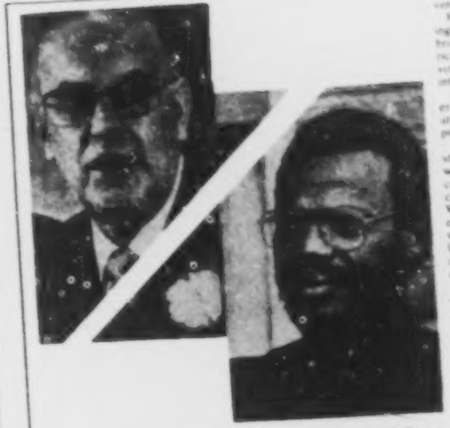
We inform the United States Government that:

1. No mass meeting of Black South Africans has ever approved of disinvestment as a strategy against apartheid.
2. No democratically elected leader in a membership based organisation of any importance has ever been given a mandate to accept disinvestment as a viable Black political option.

On behalf of Black South Africa, we petition President Reagan, the Senators of the United States and its Congressmen to reject all pressures exerted on them to express abhorrence of apartheid through disinvestment in South Africa.

We thus petition because:

1. Disinvestment will minimise positive Western influences which we need in South Africa to speed up the process of change.
2. Disinvestment will further the politics of violence and damage the politics of reason.
3. Disinvestment is advocated by those who can not see that economic progress gives rise to intergroup dependencies which favour the politics of non-violent negotiation.
4. Disinvestment is most vehemently called for by those who favour the employment of violence to bring about change.
5. Whatever happens in this country, massive backlogs in Black housing, education, health and welfare services and all things Americans recognise to be essential to a decent qualities of human life, will only be wiped out at some future time if we do not damage the economic foundations of South Africa in liberating it from the tyranny of racial oppression.
6. Existing Black poverty will be greatly increased if effective disinvestment campaigns deepen already very problematic unemployment levels.
7. The United States, as the world's leading industrial democracy, should do everything in its power to foster the economic development of the whole of Southern Africa. This obligation to Africa and to the Third World will not be served by damaging not only the South African Economy, but also impoverished neighbouring economies.



Government urged to reconsider

Statement of intent vital, says Chief Buthelezi

The South African Government has evaded the call by Chief M G Buthelezi for it to issue a "statement of intent" regarding power sharing between Blacks and Whites.

The next issue of Clarion Call will be devoted exclusively to this issue and will describe, in detail, the stand of the KwaZulu Government and Inkatha.

Recent attempts by the State President, Mr P W Botha, and the Minister of Constitutional Development, Mr Chris Heunis, appear to have "poured cold water" — according to Chief Buthelezi — on the politics of meaningful change in the country.

As a result, violent reaction to apartheid could become endemic and a permanent aspect of political life, Chief Buthelezi added.

President P W Botha told millions of British television viewers in a recent interview with Brian Walden that he was "not prepared to do anything to destroy the present character of South Africa" and that the Government would never agree to one-man-one-vote in a unitary state.

"I am prepared to talk about power-sharing without insisting on one-man, one-vote in a unitary state.

"I ask simply that the South African Government declare its intention of talking about an alternative to a one-man, one-vote in a unitary state with Black South Africa.

"A declaration or statement of intent should call on all leaders to amend the South African constitution to make it acceptable to all groups.

"We must seek an alternative political system in which universal adult suffrage is expressed in constitutional terms acceptable to all the people of South Africa.

"Power-sharing within the framework of the present constitution is not possible ... power-sharing will only have meaning for Blacks when they share power at central government level."

— Chief M G Buthelezi, Legislative Assembly, Ulundi.

He said the Government was working towards creating a system "for the broadening of democracy in South Africa" to see to it that everybody had a vote as far as possible over his own interests.

Asked whether he envisaged a Federal solution to the South African situation, Mr Botha said he did not want to prejudice the issue.

"What I have in mind is that we will start with an open agenda, providing we accept that we are a multicultural country and that every one of these cultural societies has certain rights. We are looking for a solution where every one of these cultural societies will retain their way of life, their language rights, their traditions and also, to a certain extent, their own ambitions."

In the television interview, President Botha made several statements relating to Chief Buthelezi. The Chief has subsequently made it clear that he totally disagrees with President Botha's interpretation of certain events and issues.

Chief Buthelezi told the KwaZulu Legislative Assembly: "The State President told all of South Africa and the whole world (in the television interview) that he had met me frequently and that while he and I both accepted differences of opinion on some matters, we co-operated on a wide range of issues.

"The fact of the matter is that we have only held one formal discussion in four years and one private one (arranged by a prominent South African businessmen) to break the ice for the sole discussion," he added.

"But Mr Botha wants to pretend to the world that I am working closely with him and that we have our differences of opinion.

"... he (Botha) rejected what we regard as the essence of the Buthelezi Commission report. He ruled out giving political expression to the total interdependence of KwaZulu and Natal and he poured cold water on the prospects that the area of KwaZulu/Natal could be an experimental seedbed for the future. He ruled out the possibility of the government making a declaration of intent about power-sharing.

"The State President misleads South Africa ... if my going to Cape Town to see the State President is construed as active co-operation in legitimising White supremacist politics, I will in future rather stay here in

Ulundi and fold my arms while the Government squanders the hope which flows from the willingness of the majority of Blacks in this country to seek non-violent solutions..."

Chief Buthelezi said he was not afraid of "wilderness politics" and he would have to withdraw from situations in which he was represented as betraying the trust of millions of Black South Africans.

He went on to stress that within the framework of what President Botha had said on television there was nothing that he could talk to him about.

"The world must be told that he refuses to discuss even the possibility of power-sharing in a unitary state, that Mr Botha regards my goodwill and that of Inkatha as an expendable item which he does not really need."

Power-sharing, he said, would only have meaning for blacks when they shared power at central government level.

One man, one vote in a unitary state was his and Black South Africans' cherished ideal.

"No matter how deeply I cherish this ideal," said Chief Buthelezi, "I know that at this point in the history of our country, Whites will be driven to grave acts of desperation if we try to ram this solution down their throats.

"We would have to do so with butts of guns and we would have to attempt to do so in situations in which Whites would adopt a scorched-earth policy in their resistance to it.

"On the other hand, Whites will have to ram down Black throats, also with the butt of a gun, the notion that they as a minority are entitled to appropriate 87 percent of the country and all its wealth as their own and, therefore, all final decision-making both in the realms of internal and external policy.

"In recognition of these harsh realities, and out of a deep sense of South African patriotism, I express the love of my land by taking the first steps in the politics of negotiation.

"At great cost I take the step towards the politics of negotiation by saying to White South Africa that I am prepared to talk about power-sharing, without insisting that we talk about one-man-one-vote... in a unitary state..."

Chief Buthelezi said the South African Government had grasped the need to bring about reform with "... a very shaky White hand..."

Its lack of courage in doing what simply had to be done boldly, expediently and with determination could well put President Botha "on the skids..."

"I am against a unitary state in the form either of a federation or of a union...

"We believe in the principle of one person, one vote as long as it is not in a unitary state.

"What we are working towards is to create a system for the broadening of democracy in South Africa to see to it that everybody has a vote as far as possible over his own interests.

"I am not prepared to do anything to destroy the present character of South Africa..."

— President P W Botha in a British television interview with Brian Walden.

[redacted]

"The State President misleads South Africa and the world when he says he has had frequent discussions with me. We have only had one formal and one informal discussion in four years...

"Mr Botha wants to pretend to the world that I am working closely with him and that we have cosy discussions, despite the fact that we have differences of opinion.

"Within the framework of what Mr Botha said in his television interview, there is nothing I can talk to him about...

"The world must be told that he refuses to discuss even the possibility of power-sharing in a unitary state and that he regards my goodwill and that of Inkatha as an expendable item which he does not really need...

"I will only speak to President Botha about power-sharing ... to keep alive the prospects of negotiation."

— Chief M G Buthelezi, Legislative Assembly, Ulundi.

In brief Chief Buthelezi asked for the following:

- The amendment of the South African Constitution to make it acceptable to all groups.
- The abandonment of apartheid.
- The provision of a political system in which universal adult suffrage is expressed in constitutional terms acceptable to all.
- The use of first, second and third tier levels of government to "fashion national unity by deepening the democratic process..."

Chief Buthelezi said the only point in his declaration that was "totally non-negotiable" was that South Africa was one country, and there should be one citizenship for one nation.

He criticised Mr Chris Heunis, Minister of Constitutional Development and Planning, for his statement recently that he was not prepared to talk about a federal solution.

"Whether or not we end up with a federation of one kind or another, or whether or not we end up with an alternative constitutional model, negotiations cannot even begin if the Government rules out discussions about the merits of a federal formula," Chief Buthelezi emphasised.

He went on to threaten to close down the KwaZulu Legislative Assembly if the Assembly is "pushed too far" on the question of constitutional development.

Chief Buthelezi said he would "resist the dramatic" in politics as long as he was able to. However, he might have no choice but to go back to the people for a mandate for a much clearer focus on strategies and tactics which would have to be adopted to nurture democratic decency in South Africa.

President Botha had ruled out the possibility of the Government making a declaration of intent about power-sharing.

"If the President's statements reflect all that there is in him, I would rather go to the people for a massive endorsement of my opposition to him," he said.

"If we in this House are pushed too far, we will have no choice but to prorogue the KwaZulu Legislative Assembly.

"I ask simply that the Government declare its intention of talking about an alternative to a one-man, one-vote unitary state with Black South Africa."

Declaration of Intent

Chief M G Buthelezi told the KwaZulu Legislative Assembly that "lest there be any possibility that I have been misconstrued or not understood" he would table the first draft of the "kind" of Declaration of Intent about which he was talking. He emphasised he was only giving an example of the kind of declaration he was talking about. There were Whites who were mislead about what Black South Africa demanded. They did not demand to dominate as Blacks over Whites. They sought only to share in a way in which Whites could join in. "If we cannot do this, then what is there to do?" he asked.

We the undersigned hereby declare our commitment to serve God in obedience to His divine will for our country and together:

Recognise that:

- The history of mankind shows the need for adaptive change among all peoples and all nations.
- Nations which have managed to avoid the use of violence in the achievement of national objectives are the nations which have grown in wisdom.
- Both mistakes and lessons not yet learned led to errors of judgement in the mainstream politics in both the Black and White sections of our society.
- The South African people are a family of mankind, seeking to live in harmony in the African community of nations and seeking to do so by expressing civilised ideals in the practical social, economic and political affairs of our country.
- The South African constitution as it is now written is by force of history and reality a first step in constitutional reform which urgently needs the second step to be taken of enriching the constitution to make it as acceptable to the broad mass of African opinion as it has been made acceptable to the broad mass of White opinion.
- The Westminister model of government was not ordained by God to be the only form of good government.

We therefore accept:

- The need to make the preamble to the South African constitution of equal value to all the groups and peoples of the country by enriching the clause: "To respect, to further and to protect the self-determination of population groups and peoples" to include the notion that this can best be done by sharing power. We need to share power in such a way that no one can dictate to any other group how to express its own self-determination, and we also need to share power in a formula within which the hallowed values of good government are not compromised.
- The need to preserve the constitutionality of the adaptive democratic process on which we will jointly rely in being subservient to the divine will for our country.

We will therefore together seek:

- To negotiate as leaders to amend the South African constitution to make it more acceptable to all groups.
- To find an alternative political system to that which the world at large understands by the word 'apartheid' and also to seek an alternative political system in which universal adult suffrage is expressed in constitutional terms acceptable to all the peoples of South Africa.
- To give expression to the common citizenship of all South Africa's peoples

without qualifying the meaning of citizenship for any group.

- To use the opportunities presented in practical politics at first, second and third tier levels of government to fashion national unity by deepening the democratic process, and to use the democratic process in exploration of what needs to be done to get the people to legitimise the instruments of government.

We therefore pledge ourselves:

- To express national pride and patriotism by insisting that South Africans will decide South Africa's future in the acceptance of each other as individuals and groups and the acceptance of each other's cultural rights to be who they are.
- To start where we find ourselves in history and to move from there to build on all that is positive and valuable and to change that which is negative and undesirable.
- Each to work in our own constituencies to develop a South African pride in managing our own South African affairs in harmony with internationally accepted standards of civilised decency without being dictated to from without.

Having thus declared we stand together to defend our right even with our lives to take the steps and the time needed to establish consensus between groups and to win support for our joint efforts in the South African family of nations.

And furthermore to stand together to defend South Africa from external onslaughts and to stand together to resist any use of violence which threatens the politics of negotiation aimed at national reconcilation.

I make only one thing totally non-negotiable. South Africa is one country, and there must be one citizenship for one nation.

27th May 1985.

KWAZULU/INKATHA LEADERSHIP:

Chief Minister, Minister of Economic Affairs and Police and President of Inkatha:
CHIEF M G BUTHELEZI.

Minister of Education and Culture and Secretary-General of Inkatha:
DR O D DHLOMO.

Minister of Works and Deputy Secretary-General of Inkatha:
CHIEF S H GUMEDE.

Minister of Health and Welfare and Chairman of the Social and Cultural Committee of Inkatha:
DR F T MDLALOSE.

Minister of Justice and Chairman of the Security Committee of Inkatha:
THE REV. C J MTETWA.

Chief Whip, Legislative Assembly and Chairman of the Economic and Finance Committee of Inkatha:
MR S Z CONCO.

Minister of the Interior and Chairman of the Political, Constitutional and Legal Committee of Inkatha:
DR D R B-MADIDE.

Chairman, Inkatha Women's Brigade:
MRS A MCHUNU.

Chairman, Inkatha Youth Brigade:
MR K ZONDI.

National Organiser, Inkatha Youth Brigade:
MR NTWE MAFOLE.